

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

BEFORE THE CHIEF PROCUREMENT  
OFFICER FOR CONSTRUCTION

IN THE MATTER OF: BID PROTEST )

DECISION

PADDOCK CONSTRUCTION CO., INC.)

CASE NO. 2009-003

v. )

UNIVERSITY OF SOUTH CAROLINA )

POSTING DATE:  
SEPTEMBER 30, 2008

TEN LANE AIR LIFT BULKHEAD )  
BLATT PE CENTER NATATORIUM )  
PROJECT USC-BVB-1308-JN )

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to delegation of a request from Paddock Construction Co, Inc., under the provisions of section 11-35-4210 of the South Carolina Consolidated Procurement Code, to the Chief Procurement Officer for Goods and Services, for an administrative review on the New 10 Lane Air Lift Bulkhead for the Blatt PE Center Natatorium ("the Project") for University of South Carolina. Paddock protests USC's posting of a Notice of Intent to Award a contract for the project to Composite Aquatic Innovations, Inc. (A copy of Paddock's protest is attached as Exhibit "A"). The CPOC conducted an administrative review without hearing. This decision is based on that review and applicable law.

#### **NATURE OF THE PROTEST**

On July 21, 2008, USC advertised for best value bids to provide and install a floating bulkhead manufactured by Stark Bulkheads for the Blatt PE Center Natatorium. [A copy of USC's solicitation is attached as Exhibit "B"] On July 31, 2008, USC issued Addendum Number 1, which, among other things, clarified, that USC, not the vendor, would remove and replace all brickwork necessary to create an opening large enough to bring the bulkhead into the Natatorium. USC did not issue any other amendments to the solicitation.

By the time for receiving bids, USC received bids from Paddock, Composite, and Natare Corporation. Composite submitted both the low bid and the bid that USC determined provided the best value in accordance with the criteria set forth in the solicitation.

On August 18, 2008, USC posted Notice of Award of a contract to Composite. On August 28, 2008, Paddock filed its protest with the Chief Procurement Officer for Goods and Services. Paddock protests USC's award on the grounds that Composite is not a responsible offeror because it does not possess a South Carolina Contractor's License. In support of its protest, Paddock argues that USC's solicitation was one for construction and argues that the Contractors Licensing Act (the "Licensing Act"), Chapter 11, Title 40 of the South Carolina Code of Laws, and Chapter 61-51 of the South Carolina Code of Regulations require Composite to be a licensed contractor.

### **DISCUSSION**

No entity or individual may perform or offer to perform construction work in South Carolina in excess of \$5,000.00 without a license issued in accordance with the Licensing Act. *S.C. Code Ann. § 41-11-30*. For State procurement, the possession of a contractor's license required by the Licensing Act is an issue of responsibility. See *Protest of Burkwood Construction Company, Inc., Case No. 1997-8*; *Protest of Roofco, Inc., Case No. 2000-14(I)*. A vendor that does not possess a required contractor's license is not a responsible vendor and may not be awarded a contract. *S.C. Code Ann. § 11-35-1520(10) and S.C. Code Ann. Regs. 19-445.2125(D)*.

The Contractors' Licensing Board (Board) is the state authority primarily responsible for interpreting and enforcing the provisions of the Licensing Act. By long standing agreement, the Board Staff provides the CPOC with advisory opinions concerning the Board's interpretation of the Licensing Act. The CPOC traditionally gives great weight to the opinion of the Board Staff. The Board's administrator, after reviewing USC's solicitation, the proposal of Composite, and literature regarding Stark Bulkheads, advised the CPOC that they do not consider Composite's proposal to be one for construction requiring a contractor's license. [Copies of the CPOC's enquiry to the Board administrator with attachments and administrator's response are attached as Exhibit C]

Paddock argues that Composite is not only required to be a licensed contractor under the Licensing Act but also by South Carolina Regulations regarding pool construction. Regulations adopted by the Department of Health and Environmental Control (DHEC) concerning construction of public swimming pools provide as follows:

All new construction and alterations to existing public swimming pools must be performed by a contractor holding a South Carolina license with the appropriate sub-classification in accordance with the South Carolina Department of Labor, Licensing and Regulation's General and Mechanical Contracting Act, Chapter 11, Title 40 as amended. *See SC Code Ann. Regs. 61-51(B)(10)*

This regulation, read in conjunction with the Licensing Act cited therein does not add an additional requirement of licensure beyond the requirements of the Licensing Act. This regulation simply complements the Licensing Act by requiring a contractor working on a public swimming pool to possess a contractor's license when that work constitutes construction as required by the Licensing Act. As noted above, the staff of the Board does not consider Composite's proposal to be one for construction.

The Licensing Act defines general construction as "the installation, replacement, or repair of a building, structure, highway, sewer, grading, asphalt or concrete paving, or improvement of any kind to real property" and mechanical construction as "the installation, replacement, or repair of plumbing, heating, air conditioning, process piping, refrigeration, lightning protection equipment, or electrical components, fixtures, or devices of any kind..." *S.C. Code Ann. §§ 40-11-20(8) & (15)*. Reducing these definitions to their bare essence, construction is an improvement to real property. Consistent with this definition, DHEC requires the contractor to possess a contractor's license only when they are constructing or altering, that is making improvements, to a limited class of real property, a public swimming pool. A review of USC's solicitation and Composite's proposal shows that Composite is not proposing to improve real property by alteration or construction. *See Exhibit C*. Composite simply proposes to provide a manufactured piece of equipment and place it into a pool. This equipment will not become a part of the pool or any other real property.

**DECISION**

It is the decision of the Chief Procurement Officer for Construction that the South Carolina Contractors' Licensing and Department of Health and Environment Control Regulations do not require Composite Aquatic Innovations, Inc. to possess a South Carolina contractor's license to provide and install a Stark bulkhead and that Composite is a responsible bidder.

For the foregoing reasons Protest denied.

  
John St. C. White

Chief Procurement Officer for Construction

  
Date

Columbia, South Carolina

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

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Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: [www.procurementlaw.sc.gov](http://www.procurementlaw.sc.gov)

**FILE BY CLOSE OF BUSINESS:** Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

**FILING FEE:** Pursuant to Proviso 83.1 of the 2008 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 310, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

**LEGAL REPRESENTATION:** In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

**Martin, Deb**

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**From:** Protest-MMO  
**Sent:** Thursday, August 28, 2008 3:58 PM  
**To:** \_MMO - Procurement; Shealy, Voight  
**Subject:** FW: Protest letter for USC-BVB-1308-JN  
**Attachments:** DHEC Pool Code for South Carolina.pdf; South Carolina Code of Laws Title 40.pdf

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**From:** Michael McDuffie[SMTP:MCDUFFIE@PADDOCKPOOL.COM]  
**Sent:** Thursday, August 28, 2008 3:57:04 PM  
**To:** Protest-MMO  
**Cc:** Don Baker; 'Jack Nichols'  
**Subject:** Protest letter for USC-BVB-1308-JN  
**Auto forwarded by a Rule**

Chief Procurement Officer Materials Management Office  
1201 Main Street, Suite 600, Columbia, SC 29201

Solicitation Number: USC-BVB-1308-JN  
Issue Date: 7/21/08  
Opening Date: 8/6/08  
Awarded to: Composite Aquatic Innovations, Inc. Starkbulkheads

Paddock Construction is filing an official protest against the intent to award the bulkhead replacement (Solicitation # USC-BVB-1308-JN) to Starkbulkhead posted on August 18, 2008. Protest is based on University of South Carolina intent to award a contract to a non-licensed contractor for the State of South Carolina.

We have researched further into South Carolina Code of Laws, (Section 40), and determined the following information. Please read over the attached and highlighted sections from the South Carolina Code of Laws and South Carolina DHEC SECTION R61-51B #10.

Please review the listed points of interest which you need to review before the final bid award. Paddock has been patient and has provided resources and/or research in order to help USC make the appropriate decision under South Carolina Law. We clearly understand that Allen Carter has determined under Procurement Code that this is not construction but its been brought to your attention that by South Carolina Law this project would clearly be defined as construction and must comply with the South Carolina Code of Law sections listed below, I would also pay special attention to Section 40-11-200(B) under the South Carolina Code of Laws.

We making a formal protest based on South Carolina Laws and South Carolina DHEC Codes listed below and highlighted in the attachment.

South Carolina Codes of Laws Title 40, Professions and Occupations

8/29/2008

1. Construction is defined under the South Carolina Code of Laws, Chapter 11, Contractors Article 1 as “means the installation, replacement, or repair of a building, structure, highway, sewer, grading, asphalt or concrete paving, or improvement of any kind to real property(Section 40-11-5-(8)).” The bulkhead replacement for USC would fall directly under the definition of Construction as stated by the South Carolina Code of Laws.
2. Licensed contractors is defined as “means an entity that is licensed by the South Carolina Contractor’s Licensing Board to engage in general or mechanical contracting within the State (Section 40-11-5-(13)).” Paddock Construction was the only bidder the meets the requirements for a licensed contractor for the state of South Carolina.
3. As defined in Section 40-11-30 Licensing Requirements-“No entity or individual may practice as a contractor by performing or offering to perform contracting work for which the total cost of construction is greater than five thousand dollars for general contracting or greater than five thousand dollars for mechanical contracting without a license issued in accordance with this chapter.” The cost and description of project is clearly over \$5000.00 and contains both construction cost as well as mechanical cost valued more than \$5000.00.
4. Section 40-11-110 Disciplinary actions; conditions for imposing: civil penalties; reapplication after revocation or cancellation; completion of work in progress; revocation of individual license classification.
  - a. Section 40-11-110-(10) states as follows “entering into a contract with an unlicensed contractor for work to be performed for which a license is required.” Entering into a contract with any other bidding provider other than a South Carolina licensed contractor would be indirect violation of this section of the South Carolina State Law. The University of South Carolina would actively and unlawfully be engaged with an unlicensed contractor if the bid was awarded to the current out of state and none licensed vendor.
  - b. Section 40-11-110-(12) states it is unlawful “contracting or offering to contract or submitting a bid while a licensed is under suspension or probation;”
5. Section 40-11-200 (Unlawful practice; penalty)
  - a. Section 40-11-200 (B) states “it is a violation of this chapter for an awarding authority, owner, contractor, or an agent of an authority, owner, or contractor to consider bid, sign a contract, or allow a contractor to begin work unless the bidder or contractor has first obtained the licenses required by this chapter. Bids or contracts submitted by contractors may not be reconsidered or resubmitted to an awarding authority, contractor, or owner if the contractor was not properly licensed at the time of the initial bid or contract was submitted.” Paddock Construction was the only bidder that was under all compliances with South Carolina Law.

#### **South Carolina DHEC Pool Codes**

1. Section R.61-51(B)-10 “Construction Contractor. All new construction and alterations to existing public swimming pools must be performed by a contractor holding a South Carolina license with the appropriate subclassification in accordance with the South Carolina Department of Labor, Licensing and Regulation’s General and Mechanical Contracting Act, Chapter 11, Title 40 as amended.”

**Michael McDuffie**


Paddock Construction Co., Inc

8/29/2008

**Southeast Director of Renovation and Service**  
**(O) (803) 980-1901 ext 228**  
**(F) (803) 980-1902**  
**(c) (803)493-6736**

8/29/2008



 <b>UNIVERSITY OF SOUTH CAROLINA</b>	<b>BEST VALUE BID</b>	Solicitation Number	<b>USC-BVB-1235-JN</b>	EXH. B
		Date Printed	<b>7/21/2008</b>	
		Date Issued	<b>7/21/2008</b>	
		Procurement Officer	<b>Jack Nichols</b>	
		Phone	<b>803-777-4115</b>	
		E-Mail Address	<b>jvnichol@gwm.sc.edu</b>	

DESCRIPTION: Furnish, Deliver, and Install New 10 Lane Air Lift Bulkhead for the Blatt PE Center Natatorium

USING GOVERNMENT AGENCY: UNIVERSITY OF SOUTH CAROLINA

*The Term "Offer" Means Your "Bid" or "Proposal".*

SUBMIT OFFER BY: (Opening Date/Time): **August 6, 2008 at 3:00 pm local time** See "Deadline for Submission of Offer" provision

QUESTIONS MUST BE RECEIVED BY: **July 28, 2008 at 3:00 pm local time** See "Questions From Offerors" provision

NUMBER OF COPIES TO BE SUBMITTED: **One (1) Original and Four (4) Hardcopies Plus One (1) electronic copy**

Offers must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior.

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:

<b>MAILING ADDRESS:</b>	<b>PHYSICAL ADDRESS:</b>
University of South Carolina – Purchasing Dept. 1600 Hampton St., Suite 606 Columbia, SC 29208	University of South Carolina – Purchasing Dept. 1600 Hampton St., Suite 606 Columbia, SC 29208

See "Submitting Your Offer" provision

CONFERENCE TYPE: N/A  
DATE & TIME: N/A

LOCATION: N/A

As appropriate, see "Conferences-Pre-Bid/Proposal" & "Site Visit" provisions

<b>AWARD &amp; AMENDMENTS</b>	Award will be posted at the Physical Address stated above on <b>August 8, 2008</b> . The award, this solicitation, and any amendments will be posted at the following web address: <a href="http://purchasing.sc.edu">http://purchasing.sc.edu</a>
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You must submit a signed copy of this form with Your Offer. By submitting a bid or proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date.

<b>NAME OF OFFEROR</b> <small>(Full legal name of business submitting the offer)</small>		<b>OFFEROR'S TYPE OF ENTITY:</b> <small>(Check one)</small>  <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporate entity (not tax-exempt) <input type="checkbox"/> Tax –exempt corporate entity <input type="checkbox"/> Government entity (federal, state, or local) <input type="checkbox"/> Other _____ <small>(See "Signing Your Offer" provision.)</small>
<b>AUTHORIZED SIGNATURE</b> <small>(Person signing must be authorized to submit binding offer to enter contract on behalf of Offeror named above.)</small>		
<b>TITLE</b> <small>(Business title of person signing above)</small>		
<b>PRINTED NAME</b> <small>(Printed name of person signing above)</small>	<b>DATE SIGNED</b>	

Instructions regarding Offeror's name: Any award issued will be issued to, and the contract will be formed with, the entity identified as the offeror above. An offer may be submitted by only one legal entity. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.

STATE OF INCORPORATION (If offeror is a corporation, identify the state of Incorporation.)

TAXPAYER IDENTIFICATION NO.

(See "Taxpayer Identification Number" provision)

**PAGE TWO**  
(Return Page Two with Your Offer)

<b>HOME OFFICE ADDRESS</b> (Address for offeror's home office / principal place of business)	<b>NOTICE ADDRESS</b> (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause)								
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;">Area Code</td> <td style="width: 25%;">Number</td> <td style="width: 25%;">Extension</td> <td style="width: 35%;">Facsimile</td> </tr> <tr> <td colspan="4" style="padding: 5px;">E-mail Address</td> </tr> </table>	Area Code	Number	Extension	Facsimile	E-mail Address			
Area Code	Number	Extension	Facsimile						
E-mail Address									

<b>PAYMENT ADDRESS</b> (Address to which payments will be sent.) (See "Payment" clause)	<b>ORDER ADDRESS</b> (Address to which purchase orders will be sent) (See "Purchase Orders" and "Contract Documents" clauses)
<input type="checkbox"/> Payment Address same as Home Office Address <input type="checkbox"/> Payment Address same as Notice Address (check only one)	<input type="checkbox"/> Order Address same as Home Office Address <input type="checkbox"/> Order Address same as Notice Address (check only one)

<b>ACKNOWLEDGMENT OF AMENDMENTS</b>  Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue.  See "Amendments to Solicitation" Provision	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date

<b>DISCOUNT FOR PROMPT PAYMENT</b> See "Discount for Prompt Payment" clause	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	____ Calendar Days (%)
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<b>PREFERENCES – SC RESIDENT VENDOR PREFERENCE</b> (June 2005): Section 11-35-1524 provides a preference for offerors that qualify as a resident vendor. A resident vendor is an offeror that (a) is authorized to transact business within South Carolina, (b) maintains an office* in South Carolina, (c) either (1) maintains a minimum \$10,000.00 representative inventory at the time of the solicitation, or (2) is a manufacturer which is headquartered and has at least a ten million dollar payroll in South Carolina, and the product is made or processed from raw materials into a finished end-product by such manufacturer or an affiliate (as defined in section 1563 of the Internal Revenue Code) of such manufacturer, and (d) has paid all assessed taxes. If applicable, preference will be applied as required by law.	<b>OFFERORS REQUESTING THIS PREFERENCE MUST INITIAL HERE.</b> _____  <b>*ADDRESS AND PHONE OF IN-STATE OFFICE</b>  <input type="checkbox"/> In-State Office Address same as Home Office Address <input type="checkbox"/> In-State Office Address same as Notice Address <div style="text-align: right; font-size: small;">(CHECK ONLY ONE)</div>
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<b>PREFERENCES – SC/US END-PRODUCT</b> (June 2005): Section 11-35-1524 provides a preference to vendors offering South Carolina end-products or US end-products, if those products are made, manufactured, or grown in SC or the US, respectively. An end-product is the item identified for acquisition in this solicitation, including all component parts in final form and ready for the use intended. The terms "made," "manufactured," and "grown" are defined by Section 11-35-1524(B). By signing your offer and checking the appropriate space(s) provided and identified on the bid schedule, offeror certifies that the end-product(s) is either made, manufactured or grown in South Carolina, or other states of the United States, as applicable. Preference will be applied as required by law.	<b>IF THIS PREFERENCE APPLIES TO THIS PROCUREMENT, PART VII (BIDDING SCHEDULE) WILL INCLUDE A PLACE TO CLAIM THE PREFERENCE.</b> <b>OFFERORS REQUESTING THIS PREFERENCE MUST CHECK THE APPROPRIATE SPACES ON THE BIDDING SCHEDULE.</b>
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## **Solicitation Outline**

- I. Scope of Solicitation**
- II. Instructions to Offerors**
  - A. General Instructions**
  - B. Special Instructions**
- III. Scope of Work / Specifications**
- IV. Information for Offerors to Submit**
- V. Qualifications**
- VI. Award Criteria**
- VII. Terms and Conditions**
  - A. General**
  - B. Special**
- VIII. Bidding Schedule / Cost Proposal**
- IX. Attachments to Solicitation**

### **I. SCOPE OF SOLICITATION**

ACQUIRE SUPPLIES / EQUIPMENT (January 2006): The purpose of this solicitation is to establish a source or sources of supply for the purchase of new supplies and/or equipment as listed.

MAXIMUM CONTRACT PERIOD — ESTIMATED (January 2006): [INSERT DATE HERE] Dates provided are estimates only. Any resulting contract will begin on the date specified in the notice of award. See clause entitled "Term of Contract – Effective Date / Initial Contract Period".

### **II. INSTRUCTIONS TO OFFERORS – A. GENERAL INSTRUCTIONS**

DEFINITIONS (JANUARY 2006) EXCEPT AS OTHERWISE PROVIDED HEREIN, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION.

AMENDMENT – means a document issued to supplement the original solicitation document.

BUYER – means the Procurement Officer.

CHANGE ORDER - means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

CONTRACT - See clause entitled "Contract Documents & Order of Precedence."

CONTRACT MODIFICATION – means a written order signed by the Procurement Officer, directing the contractor to make changes which the changes clause of the contract authorizes the Procurement Officer to order without the consent of the contractor.

CONTRACTOR - means the Offeror receiving an award as a result of this solicitation.

COVER PAGE – means the top page of the original solicitation on which the solicitation is identified by number. Offerors are cautioned that Amendments may modify information provided on the Cover Page.

OFFER – means the bid or proposal submitted in response this solicitation. The terms "Bid" and "Proposal" are used interchangeably with the term "Offer."

OFFEROR – means the single legal entity submitting the offer. The term "Bidder" is used interchangeably with the term "Offeror." See bidding provisions entitled "Signing Your Offer" and "Bid/Proposal As Offer To Contract."

ORDERING ENTITY - Using Governmental Unit that has submitted a Purchase Order.

PAGE TWO – means the second page of the original solicitation, which is labeled Page Two.

PROCUREMENT OFFICER – means the person, or his successor, identified as such on the Cover Page.

YOU and YOUR – means Offeror.

SOLICITATION – means this document, including all its parts, attachments, and any Amendments.

STATE – means the Using Governmental Unit(s) identified on the Cover Page.

SUBCONTRACTOR – means any person having a contract to perform work or render service to Contractor as a part of the Contractor's agreement arising from this solicitation.

USING GOVERNMENTAL UNIT – means the unit(s) of government identified as such on the Cover Page. If the Cover Page names a "Statewide Term Contract" as the Using Governmental Unit, the Solicitation seeks to establish a Term Contract [11-35-310(35)] open for use by all South Carolina Public Procurement Units [11-35-4610(5)].

**WORK** - means all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

**AMENDMENTS TO SOLICITATION (JANUARY 2006)** (a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: <http://purchasing.sc.edu>. (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

**AWARD NOTIFICATION (JUNE 2006)** Notice regarding any award or cancellation of award will be posted at the location specified on the Cover Page. The date and location of posting will be announced at opening. If the contract resulting from this Solicitation has a total or potential value of fifty thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation. Should the contract resulting from this Solicitation have a potential value of one hundred thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation and any award will not be effective until the eleventh day after such notice is given.

**BID / PROPOSAL AS OFFER TO CONTRACT (JANUARY 2006)** By submitting Your Bid or Proposal, You are offering to enter into a contract with the Using Governmental Unit(s). Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An Offer may be submitted by only one legal entity; "joint bids" are not allowed.

**BID ACCEPTANCE PERIOD (JANUARY 2006)** In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing.

**BID IN ENGLISH & DOLLARS (JANUARY 2006)** Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation.

**CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JANUARY 2006)**

(a)(1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-

(i) Offeror and/or any of its Principals-

- (A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;
- (B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
- (C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

(b) Offeror shall provide immediate written notice to the Procurement Officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) If Offeror is unable to certify the representations stated in paragraphs (a)(1), Offer must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer may terminate the contract resulting from this solicitation for default.

CODE OF LAWS AVAILABLE (JANUARY 2006): The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at <http://www.scstatehouse.net/code/statmast.htm>. The South Carolina Regulations are available at: <http://www.scstatehouse.net/coderegs/statmast.htm>.

COMPLETION OF FORMS / CORRECTION OF ERRORS (JANUARY 2006): All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including bid schedule). (Applicable only to offers submitted on paper.)

DEADLINE FOR SUBMISSION OF OFFER (JANUARY 2006) Any offer received after the Procurement Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental bodies' mail room which services that purchasing office prior to the bid opening. [R.19-445.2070(H)]

DRUG FREE WORK PLACE CERTIFICATION (JANUARY 2006) By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

DUTY TO INQUIRE (JANUARY 2006) Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention.

ETHICS ACT (JANUARY 2006) By submitting an Offer, You certify that You are in compliance with South Carolina's Ethics, Government Accountability, and Campaign Reform Act of 1991, as amended. The following statutes require special attention: (a) Offering, giving, soliciting, or receiving anything of value to influence action of public employee – Section 8-13-705, (b) Recovery of kickbacks – Section 8-13-790, (c) Offering, soliciting, or receiving money for advice or assistance of public official – Section 8-13-720, (d) Use or disclosure of confidential information – Section 8-13-725, and (e) Persons hired to assist in the preparation of specifications or evaluation of bids – Section 8-13-1150.

OMIT TAXES FROM PRICE (JANUARY 2006): Do not include any sales or use taxes in Your price that the State may be required to pay.

PROCUREMENT AGENT (AUG 2004) Authorized Agent. All authority regarding the conduct of this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement.

PROTESTS (JUNE 2006) Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen days of the date of issuance of the applicable solicitation document at issue. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". [§ 11-35-4210]

PUBLIC OPENING (JANUARY 2006) Offers will be publicly opened at the date / time and at the location identified on the Cover Page, or last Amendment, whichever is applicable

QUESTIONS FROM OFFERORS (JANUARY 2006): (a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions must be received by the Procurement Officer no later than five (5) days prior to opening unless otherwise stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer – as soon as possible – regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition.

**REJECTION/CANCELLATION (JANUARY 2006)** The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065.]

**RESPONSIVENESS / IMPROPER OFFERS (JANUARY 2006)**

(a) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.

(b) Multiple Offers. Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted as a separate document. If this solicitation is a Request for Proposals, multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.

(c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

(d) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070].

(e) Unbalanced Bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

**RESTRICTIONS APPLICABLE TO OFFERORS (JANUARY 2006)** Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of the state Ethics Act. (a) After issuance of the solicitation, *you agree not to discuss this procurement activity in any way with the Using Governmental Unit or its employees, agents or officials.* All communications must be solely with the Procurement Officer. This restriction may be lifted by express written permission from the Procurement Officer. This restriction expires once a contract has been formed. (b) Unless otherwise approved in writing by the Procurement Officer, *you agree not to give anything to any Using Governmental Unit*

**SIGNING YOUR OFFER (JANUARY 2006)** Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words "by its Partner," and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal.

**STATE OFFICE CLOSINGS (JANUARY 2006)** If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at: [http://www.scemd.org/scgovweb/weather\\_alert.htm](http://www.scemd.org/scgovweb/weather_alert.htm).

**SUBMITTING CONFIDENTIAL INFORMATION (AUGUST 2002):** (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror

submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected! If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.)

**SUBMITTING YOUR OFFER OR MODIFICATION (JANUARY 2006)** (a) Offers and offer modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) – (1) Addressed to the office specified in the Solicitation; and (2) Showing the time and date specified for opening, the solicitation number, and the name and address of the bidder. (b) If you are responding to more than one solicitation, each offer must be submitted in a different envelope or package. (c) Each Offeror must submit the number of copies indicated on the Cover Page. (d) Offerors using commercial carrier services shall ensure that the Offer is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs (a)(1) and (2) of this provision when delivered to the office specified in the Solicitation. (e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation. (f) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

**TAX CREDIT FOR SUBCONTRACTING WITH MINORITY FIRMS (JANUARY 2006)** Pursuant to Section 12-6-3350, taxpayers, who utilize certified minority subcontractors, may take a tax credit equal to 4% of the payments they make to said subcontractors. The payments claimed must be based on work performed directly for a South Carolina state contract. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Taxpayers must maintain evidence of work performed for a State contract by the minority subcontractor. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. The subcontractor must be certified as to the criteria of a "Minority Firm" by the Governor's Office of Small and Minority Business Assistance (OSMBA). Certificates are issued to subcontractors upon successful completion of the certification process. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498. Reference: SC §11-35-5010 – Definition for Minority Subcontractor & SC §11-35-5230 (B) – Regulations for Negotiating with State Minority Firms.

**TAXPAYER IDENTIFICATION NUMBER (JANUARY 2006):** (a) If Offeror is owned or controlled by a common parent as defined in paragraph (b) of this provision, Offeror shall submit with its Offer the name and TIN of common parent. (b) Definitions: "Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member. "Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number. (c) If Offeror does not have a TIN, Offeror shall indicate if either a TIN has been applied for or a TIN is not required. If a TIN is not required, indicate whether (i) Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States; (ii) Offeror is an agency or instrumentality of a state

or local government; (iii) Offeror is an agency or instrumentality of a foreign government; or (iv) Offeror is an agency or instrumentality of the Federal Government.

**WITHDRAWAL OR CORRECTION OF OFFER (JANUARY 2006)** Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085.

## **II. INSTRUCTIONS TO OFFERORS – B. SPECIAL INSTRUCTIONS**

**DISCUSSIONS WITH BIDDERS (JANUARY 2006)** After opening, the Procurement Officer may, in his sole discretion, initiate discussions with you to discuss your bid. Discussions are possible only if your bid is apparently responsive and only for the purpose of clarification to assure your full understanding of the solicitation's requirements. Any discussions will be documented in writing and shall be included with the bid.

**PROTEST – CPO – MMO ADDRESS (JUNE 2006):** Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing (a) by email to [protest-mmo@mmo.state.sc.us](mailto:protest-mmo@mmo.state.sc.us) (b) by facsimile at 803-737-0639, or (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

## **III. SCOPE OF WORK / SPECIFICATIONS**

**Furnish, Deliver, and Install a 10 Lane Stark Air Lift Bulkhead for Blatt PE Center Natatorium per attached minimum specifications:**

### **Part 1 – General**

#### **A. Intent**

- 1) The intent of this specification is to describe a swimming pool bulkhead manufactured by Starkbulkheads that is designed to be moved within a pool structure to provide varying competitive swimming course lengths and or divide the pool for varying aquatic programs that is fabricated of materials that are permanently resistant to chemicals and air conditions that are present in a swimming pool environment.

#### **B. Performance**

- 1) The bulkhead shall be engineered to sustain the required loads and maintain the particular tolerances of the course length while providing a safe and stable platform for swimmers and officials.
- 2) The bulkhead shall be designed for regular daily movement between various locations. The bulkhead will be capable of being moved manually by two attendants of normal build and strength at a speed of at least 10 feet per minute.

#### **C. Standards**

- 1) The bulkhead shall be designed to conform to FINA, NCAA, and US Swimming Rules.

### **Part 2 – Product**

#### **A. Design**

- 1) The bulkhead shall consist of a one piece double box construction type that spans the width of the swimming pool and extends out over the gutter on the sides of the pool and matches the end walls.
- 2) The bulkhead shall be designed to support a unified live load with ½" maximum deflection in addition to all dead loads of 5600 lbs on bulkhead walk area without the assistance of constant foam or additional air to assist with the support of such load. The Safety Factor for all live and dead loads shall be at least 10. In addition the bulkhead shall be designed to withstand a uniform lateral live load of at least 30 pounds per linear foot and a point load of at least 500 pounds at the center with a maximum deflection of ½". Racing cup anchors shall be designed to resist pullout loads of at least 400 pounds each.
- 3) Starkbulkheads will provide the owner a full set of shop drawings (submittals) for review by the owner or his representatives showing design, dimensions, features, special conditions for the installation or preparation of installation.

#### **B. Fabrication**

- 1) The bulkhead shall be completely shop fabricated in one piece.
- 2) The bulkhead shall be entirely constructed out of vinyl ester resin with a vinyl ester pigmented gelcoat outer layer that includes a UV inhibitor.



### **C. Materials and Components**

- 1) The top of the bulkhead shall be designed and used as a walk way and houses all anchorage points for starting blocks, stanchions, and timing equipment.
- 2) Starting platform stanchion anchors shall be provided in the deck for the installation of owner chosen and furnished starting platforms. The anchors only are to be manufactured and provided by Starkbulkheads. The anchors are to be of type 316L stainless steel and mount to the top deck and travel down through the water line shelf to prevent any deflection under the maximum loading conditions recommended by the take off platform manufacturer.
- 3) All horizontal and vertical field surfaces of the bulkhead shall be of non-skid surface.
- 4) Each lane of the bulkhead shall feature hand holds/flow through openings at waterline to allow for 100% of waves to pass through the bulkhead eliminating wave bounce back. Size of opening depends on length of the lane minus -18" for lane rope anchors x 6" tall.
- 5) The bulkhead shall have black non skid targets and conform to FINA and NCAA regulations unless otherwise noted.
- 6) Racing lane line anchors shall be provided at waterline between the targets and be designed to accept the lane line anchors with no deflection to the bulkhead. Anchors to resist a pullout load of at least 400 pounds.
- 7) Water polo rope anchors shall be provided in the flow through area for easy access from either side of the bulkhead. Anchors to resist a pullout load of at least 400 pounds.
- 8) Bulkhead shall optionally feature alternate lane line anchors for additional lanes for practice purposes to be located in the flow through area for easy access from either side of the bulkhead. Anchors to resist a pullout load of at least 400 pounds.
- 9) Bulkhead shall optionally feature toe-ledges located at the bottom of bulkhead centered on the target and shall allow water to flow freely through the bulkhead for ease of movement.
- 10) A timing system cable tray shall be molded in under the top deck/walkway of the bulkhead.
- 11) Access hatches shall be included at both ends in the deck of the bulkhead to provide access to the air injection valves, anchor mechanisms, inspection of the interior, and to allow for installation of wiring in the cable tray.
- 12) Fiberglass locking pins and adjustment plates shall be provided on both ends of the bulkhead which shall firmly anchor the bulkhead against any movement from loads imposed by lane lines or by swimmers during competition and have a shearing force of at least 5500 lbs. The pin adjustment plates shall provide a minimum of 1-1/2" adjustment to precisely establish the competition course. (anchorage points in pool or gutter system to be provided by others unless Stark is responsible for installation).
- 13) Weight bearing carriage assemblies shall be fabricated into the structure at each end of the bulkhead that extends out over/into the gutter or pool deck. Each assembly shall incorporate UHMWP (ultra high molecular weight polyethylene) bearing pads that are designed to support the total weight of the bulkhead while in dry dock.
- 14) Internal air chambers will be provided as means of reducing the static weight and initial inertial resistance. Moving the bulkheads shall be easily accomplished by one person at each end of the bulkhead. The Internal air chambers will be constructed so that when adding air volume to raise and move the bulkhead for change in position the bulkhead shall have the means to balance and eliminate the need for removal of the starting platforms.
- 15) Bulkhead shall glide freely on UHMWP (ultra high molecular weight polyethylene) guide pads at both gutter lip and side walls to prevent damage to pool during movement.
- 16) Removable guard rails shall be provided at both ends of the bulkhead. Rails shall be custom fabricated of one continuous length of tubing. The tubing shall be of type 316 stainless steel, 1.90 inch OD x .145 inch wall thickness polished to 320 grit finish.
- 17) A Portable leaf blower/inflation device to be provided for inflation of air chambers for movement.

### **Part 3 – Execution**

#### **A. Installation**

- 1) The bulkhead shall be fabricated, delivered, and installed in one piece.
- 2) The entire system shall be inspected prior to shipment to verify compliance with the fabrication drawings and quality of workmanship requirements.
- 3) Installation shall be performed per manufacturers instruction. Manufacturer shall provide factory trained and experienced personnel for coordination, consultation, and instruction for the actual bulkhead delivery and for training of the Owner's personnel in the use, operation, and maintenance of the bulkhead. As well as provide necessary instruction and coordination as required to coordinate anchorage installation in pool wall or deck by others unless Stark is responsible for installation.
- 4) An adequate and easily accessible staging area is to be provided by owner immediately adjacent to the designated entry portal that shall be of suitable size to allow passage of the bulkhead with two forklifts and the length of the bulkhead without extreme measures.

- 5) The installation shall be true, level and plumb with the existing structure to permit full range of movement.
- 6) Suitable means of anchoring the bulkhead to be provided by others to resist all dead and live load components in the gutter system, pool deck, or pool wall unless Stark is responsible for installation. Racecourse dimensions shall be field certified in compliance with the competitive standards having jurisdiction and submitted to the owner in writing by the certifying engineer or land survey.
- 7) During installation protection shall be provided for the existing deck, pool walls, pool floor, and general building construction.
- 8) The bulkhead shall be self supporting, not requiring jacks for support when the water is removed from the pool. The bulkhead shall be placed only where the gutter system has added bracing to support bulkhead whenever the pool is empty.
- 9) The bulkhead shall not be moved until water is in the pool and at the level of the gutter lip.
- 10) The exposed surfaces will be free of all imperfections or irregularities. A field inspection by the Owner will be conducted upon completion of the installation to ensure compliance before acceptance.

#### **B. Demonstration**

- 1) Starkbulkheads or it's representative will provide the owner's personnel with use, operation, and maintenance instructions.
- 2) Upon completion/installation Starkbulkheads shall provide a full set of closing documents including final construction drawings that show all the features of the system, complete dimensional details showing proper sizing and locations, operating maintenance manual, and warranty.

### **Part 4 – Warranties**

- 1) Manufacturer and installer guarantees that on completion of the installation the bulkhead will move freely from one location to the other, providing the pool walls are straight and parallel and do not vary more than plus or minus  $\pm \frac{1}{2}$ " and the bulkhead will not rack or bind when moved in accordance with the manufacturers operating instruction.
- 2) The bulkhead shall be guaranteed by Stark for workmanship, materials, and performance for a period of three (3) years when used in accordance with installation and operation instructions. This warranty shall not include or cover abusive or improper treatment to the bulkhead by others either during construction or operation.
- 3) The entire bulkhead shall be guaranteed with a non pro-rated warranty against structural defects to which changes the structural requirements for a period of twenty five (25) years following the installation. This warranty shall not include or cover abusive or improper treatment to the bulkhead by others either during construction or operation.

#### **Requirements**

1. One fiberglass composite bulkhead approximately four (4) feet wide, four feet six inches (4'6") to five feet (5') tall, and seventy eight feet (78') long.
2. One piece "monolithic" construction.
3. Twenty (20) starting platform stanchion anchors (std dual post style).
4. Ten feet seven inches (10'7") lane (one side only) with five feet six inches (5'6") X six inches (6") (both sides) flow through openings per lane at waterline.
5. Eleven (11) racing lane line cup anchors (one side only).
6. Ten (10) black non-skid targets (one side only).
7. White non-skid field surfaces.
8. Two (2) stainless steel removable handrails (one at each end).
9. Two (2) access hatches to facilitate flotation valves and timing tray (one at each end).
10. Two (2) locking pins with adjustment plates inside bulkhead (one at each end).
11. Two (2) stanchion anchors to be used for backstroke or false start flags.
12. One (1) timing cable tray down the length of bulkhead for timing cables.
13. Internal air flotation chambers to ease movement of bulkhead by two people.
14. One (1) blower to inflate air flotation chambers.
15. Instruction and maintenance manuals.
16. Price must include all freight allowance to include tailgate delivery to the project site.
17. Three (3) year material and workmanship warranty.
18. Twenty five (25) year structural warranty.
19. Must remove and dispose of old bulkhead.
20. USC will remove and replace all brickwork.
21. Optional: Provide gutter pin plate receptacles, if needed, (two for each "parking" location)

#### **IV. INFORMATION FOR OFFERORS TO SUBMIT**

INFORMATION FOR OFFERORS TO SUBMIT – GENERAL (JANUARY 2006): Offeror shall submit a signed Cover Page and Page Two. Offeror should submit all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in section IX. Attachments to Solicitations.

#### **V. QUALIFICATIONS**

QUALIFICATION OF OFFEROR (JANUARY 2006): To be eligible for award of a contract, a prospective contractor must be responsible. In evaluating an Offeror's responsibility, the State Standards of Responsibility [R.19-445.2125] and information from any other source may be considered. An Offeror must, upon request of the State, furnish satisfactory evidence of its ability to meet all contractual requirements. Unreasonable failure to supply information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive an award. S.C. Code Section 11-35-1810.

#### **VI. AWARD CRITERIA**

AWARD CRITERIA – BEST VALUE BIDS (JANUARY 2006): Award will be made to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State.

EVALUATION FACTORS – BEST VALUE BID (JANUARY 2006) Offers will be evaluated using only the factors stated below. Numerical weightings are provided for each evaluation factor. All evaluation factors, other than cost (which must be at least 60%), will be considered prior to determining the effect of cost on the score for each offeror. Once evaluation is complete, all responsive offerors will be ranked from most advantageous to least advantageous.

Cost: Total cost associated with the furnishing, delivery, and installation of the new bulkhead as specified herein.

Experience in providing Air Lift Bulkheads at other Division I-A Institutions and professional organizations:  
Provide documentation from three (3) projects of similar scope and complexity

References: Provide references from the above projects. Include current contact information (Telephone/fax/email). USC reserves the right to contact these references.

Reliability of Delivery and an Implementation Schedule

- a. Include a signed letter of understanding of the scope of the work to be done under this contract.
- b. Provide a detailed plan for implementation of this project.

60 Points      Cost

20 Points      Experience in providing Air lift Bulkheads of this nature in Division I-A  
Institutions and professional organizations

10 Points      References

10 Points      Reliability of Delivery and Implementation Schedule

## VII. TERMS AND CONDITIONS – A. GENERAL

**ASSIGNMENT (JANUARY 2006):** No contract or its provisions may be assigned, sublet, or transferred without the written consent of the Procurement Officer.

**BANKRUPTCY (JANUARY 2006):** (a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Using Governmental Unit. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract. (b) Termination. This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy.

**CHOICE-OF-LAW (JANUARY 2006):** The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.

**CONTRACT DOCUMENTS & ORDER OF PRECEDENCE (JANUARY 2006):** (a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) documentation regarding the clarification of an offer [e.g., 11-35-1520(8) or 11-35-1530(6)], if applicable, (3) the solicitation, as amended, (4) modifications, if any, to your offer, if accepted by the Procurement Officer, (5) your offer, (6) any statement reflecting the state's final acceptance (a/k/a "award"), and (7) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (6) above shall apply notwithstanding any additional or different terms and conditions in either (i) a purchase order or other instrument submitted by the State or (ii) any invoice or other document submitted by Contractor. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

### **DISCOUNT FOR PROMPT PAYMENT (JANUARY 2006)**

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the state annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

**DISPUTES (JANUARY 2006):** (1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United State's Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

**EQUAL OPPORTUNITY (JANUARY 2006).** Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference.

**FALSE CLAIMS (JANUARY 2006):** According to the S.C. Code of Laws § 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.

**FIXED PRICING REQUIRED (JANUARY 2006):** Any pricing provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit contractor from offering lower pricing after award.

**NON-INDEMNIFICATION (JANUARY 2006):** Any term or condition is void to the extent it requires the State to indemnify anyone.

**NOTICE (JANUARY 2006):** (A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to contractor shall be to the address identified as the Notice Address on Page Two. Notice to the state shall be to the Procurement Officer's address on the Cover Page. Either party may designate a different address for notice by giving notice in accordance with this paragraph.

**PAYMENT (JANUARY 2006):** (a) The Using Governmental Unit shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless the purchase order specifies another method of payment, payment will be made by check. (c) Payment and interest shall be made in accordance with S.C. Code Section 11-35-45. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable.

**PUBLICITY (JANUARY 2006):** Contractor shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Procurement Officer.

**PURCHASE ORDERS (JANUARY 2006):** Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The using governmental unit shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order.

**SETOFF (JANUARY 2006)** The state shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the state with regard to this contract, any other contract with any state department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the state for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

**SURVIVAL OF OBLIGATIONS (JANUARY 2006):** The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit.

**TAXES (JANUARY 2006):** Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely the State's obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the State to contractor, contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor.

**TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JANUARY 2006)** Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term.

**THIRD PARTY BENEFICIARY (JANUARY 2006)** This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third party beneficiary or otherwise.

**WAIVER (JANUARY 2006)** The State does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the State's rights under this Contract. Any waiver must be in writing.

## **VII. TERMS AND CONDITIONS – B. SPECIAL**

**CISG (JAN 2006):** The parties expressly agree that the UN Convention on the International Sale of Goods shall not apply to this agreement.

**COMPLIANCE WITH LAWS (JAN 2006):** During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.

**DEFAULT (JAN 2006):**

(a)(1) The State may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to-

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or

(iii) Perform any of the other material provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The State's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Procurement Officer) after receipt of the notice from the Procurement Officer specifying the failure.

(b) If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Procurement Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the State in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the State may require the Contractor to transfer title and deliver to the State, as directed by the Procurement Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing

materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Procurement Officer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.

(f) The State shall pay contract price for completed supplies delivered and accepted. The Contractor and Procurement Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property; if the parties fail to agree, the Procurement Officer shall set an amount subject to the Contractor's rights under the Disputes clause. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the Procurement Officer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the termination had been issued for the convenience of the State. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under the Disputes clause.

(h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

HIPAA LAW: The Contractor agrees that to the extent that some or all of the activities within the scope of this Contract are subject to the Health Insurance Portability Accountability Act of 1996, P.L. 104-91, as amended ("HIPAA"), or its implementing regulations, it will comply with the HIPAA requirements and will execute such agreements and practices as the University of South Carolina may require to ensure compliance. Additional information may be viewed at: <http://www.sc.edu/hipaa/>

INDEMNIFICATION - THIRD PARTY CLAIMS (JAN 2006): Notwithstanding any limitation in this agreement, Contractor shall defend and indemnify the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all suits or claims of any nature (and all damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities attributable thereto) by any third party which arise out of, or result in any way from, any defect in the goods or services acquired hereunder or from any act or omission of Contractor, its subcontractors, their employees, workmen, servants or agents. Contractor shall be given written notice of any suit or claim. State shall allow Contractor to defend such claim so long as such defense is diligently and capably prosecuted through legal counsel. State shall allow Contractor to settle such suit or claim so long as (i) all settlement payments are made by (and any deferred settlement payments are the sole liability of) Contractor, and (ii) the settlement imposes no non-monetary obligation upon State. State shall not admit liability or agree to a settlement or other disposition of the suit or claim, in whole or in part, without the prior written consent of Contractor. State shall reasonably cooperate with Contractor's defense of such suit or claim. The obligations of this paragraph shall survive termination of the parties' agreement.

INTELLECTUAL PROPERTY INFRINGEMENT (JAN 2006) (a) Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the State, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. State shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. State shall allow Contractor to settle such claim so long as (i) all settlement payments are made by Contractor, and (ii) the settlement imposes no non-monetary obligation upon State. State shall reasonably cooperate with Contractor's defense of such claim. (b) In the event an injunction or order shall be obtained against State's use of any acquired item, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either: (1) procure for State the right to continue to use, or have used, the acquired item, or (2) replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by State. If neither (1) nor (2), above, is practical, State may require that Contractor remove the acquired item from State, refund to State any charges paid by State therefor, and take all steps necessary to have State released from any further liability. (c) Contractor's obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Contractor's compliance with specifications furnished by the State unless Contractor knew its compliance with the State's specifications would infringe an IP right, or (ii) that the claim is caused by Contractor's compliance with specifications furnished by the State if the State knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor. (d) As used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right.

"Acquired item(s)" means the rights, goods, or services furnished under this agreement. "Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work. (e) Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement.

PRICING DATA – AUDIT – INSPECTION (JAN 2006) [Clause Included Pursuant to § 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. § 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with contractor which exceeds \$100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because you furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between parties. (b) Records Retention. You shall maintain your records for three years from the date of final payment, or longer if requested by the chief Procurement Officer. The state may audit your records at reasonable times and places. As used in this subparagraph (b), the term "records" means any books or records that relate to cost or pricing data submitted pursuant to this clause. In addition to the obligation stated in this subparagraph (b), you shall retain all records and allow any audits provided for by 11-35-2220(2). (c) Inspection. At reasonable times, the state may inspect any part of your place of business which is related to performance of the work. (d) Instructions – Certification. When you submit data pursuant to subparagraph (a), you shall (1) do so in accordance with the instructions appearing in Table 15-2 of 48 C.F.R. § 15.408 (2004) (adapted as necessary for the state context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR § 15.406-2(a) (adapted as necessary for the state context). (e) Subcontracts. You shall include the above text of this clause in all of your subcontracts. (f) Nothing in this clause limits any other rights of the state.

PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT: The University of South Carolina requires that all contractual activities to be in compliance with local, state and federal mandates concerning "protection of human health and the environment". Any contractor doing business with the University will be required to document compliance and to specify prudent practices used by the contractor to address applicable mandates including, but not restricted to "the Hazard Communication Standard" OSHA CFR 1910.1200 (SCRR Article 1, 71-1910.1200). By submission of this bid, the vendor agrees to take all necessary steps to ensure compliance with these requirements.

Furnish, deliver and install new supplies/equipment complying with the enclosed description and/or specifications and conditions as applicable to this bid notice. (SPM013)

The specifications listed herein are not to be considered restrictive to one source of supply. However, items offered must be equal in quality and performance. The offeror must include with his bid/quote, supporting product data sufficient for the University to determine equality and acceptability. The right is reserved to reject any offering in which the items offered are considered unsatisfactory in any manner. The University will determine if minor deviations from the listed features are acceptable. (SPM022)

Award will be made to one vendor for the entire quantity. (SPM034)

Deliveries shall be FOB Delivered and Installed. (SPM056)

It shall be the successful vendor's responsibility to dispose of all wrappings, crating and other disposable materials pertaining to this contract at the end of each working day and upon completion of installation. (SCM025)



## VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL

Total costs to furnish, deliver, and install  
a new air lift bulkhead and removal/disposal of  
Old bulkhead as specified herein.

\$ \_\_\_\_\_

**Total Cost** \$ \_\_\_\_\_

Optional: Provide gutter pin plate receptacles, if needed,.  
(two for each "parking" location)

\$ \_\_\_\_\_

Please provide a break down of cost in the following categories:

Materials \$ \_\_\_\_\_

Labor \$ \_\_\_\_\_

Any additional charges/fees \$ \_\_\_\_\_

Company Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

# **IMPORTANT TAX NOTICE - NONRESIDENTS ONLY**


Withholding Requirements for Payments to Nonresidents: Section 12-8-550 of the South Carolina Code of Laws requires persons hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within South Carolina to withhold 2% of each payment made to the nonresident. The withholding requirement does not apply to (1) payments on purchase orders for tangible personal property when the payments are not accompanied by services to be performed in South Carolina, (2) nonresidents who are not conducting business in South Carolina, (3) nonresidents for contracts that do not exceed \$10,000 in a calendar year, or (4) payments to a nonresident who (a) registers with either the S.C. Department of Revenue or the S.C. Secretary of State and (b) submits a Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to the person letting the contract.

The withholding requirement applies to every governmental entity that uses a contract ("Using Entity"). Nonresidents should submit a separate copy of the Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to every Using Entity that makes payment to the nonresident pursuant to this solicitation. Once submitted, an affidavit is valid for all contracts between the nonresident and the Using Entity, unless the Using Entity receives notice from the Department of Revenue that the exemption from withholding has been revoked.

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Section 12-8-540 requires persons making payment to a nonresident taxpayer of rentals or royalties at a rate of \$1,200.00 or more a year for the use of or for the privilege of using property in South Carolina to withhold 7% of the total of each payment made to a nonresident taxpayer who is not a corporation and 5% if the payment is made to a corporation. Contact the Department of Revenue for any applicable exceptions.

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For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at [www.sctax.org](http://www.sctax.org).

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This notice is for informational purposes only. This agency does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, S.C. 29214-0140. All withholding questions should be directed to the Withholding Section at 803-898-5383.

	STATE OF SOUTH CAROLINA DEPARTMENT OF REVENUE <b>NONRESIDENT TAXPAYER          REGISTRATION AFFIDAVIT          INCOME TAX WITHHOLDING</b>	<b>I-312</b> (Rev. 5/7/04) 3323
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The undersigned nonresident taxpayer on oath, being first duly sworn, hereby certifies as follows:

1. Name of Nonresident Taxpayer: \_\_\_\_\_
2. Trade Name, if applicable (Doing Business As): \_\_\_\_\_
3. Mailing Address: \_\_\_\_\_
4. Federal Identification Number: \_\_\_\_\_
5. Hiring or Contracting with: \_\_\_\_\_
  - Name: \_\_\_\_\_
  - Address: \_\_\_\_\_
- Receiving Rentals or Royalties From: \_\_\_\_\_
  - Name: \_\_\_\_\_
  - Address: \_\_\_\_\_
- Beneficiary of Trusts and Estates: \_\_\_\_\_
  - Name: \_\_\_\_\_
  - Address: \_\_\_\_\_

6. I hereby certify that the above named nonresident taxpayer is currently registered with  
 (check the appropriate box):

- ☐ The South Carolina Secretary of State or  
☐ The South Carolina Department of Revenue

Date of Registration: \_\_\_\_\_

7. I understand that by this registration, the above named nonresident taxpayer has agreed to be subject to the jurisdiction of the South Carolina Department of Revenue and the courts of South Carolina to determine its South Carolina tax liability, including estimated taxes, together with any related interest and penalties.

8. I understand the South Carolina Department of Revenue may revoke the withholding exemption granted under Code Sections 12-8-540 (rentals), 12-8-550 (temporarily doing business or professional services in South Carolina), and 12-8-570 (distributions to nonresident beneficiary by trusts or estates) at any time it determines that the above named nonresident taxpayer is not cooperating with the Department in the determination of its correct South Carolina tax liability.

The undersigned understands that any false statement contained herein could be punished by fine, imprisonment or both.

Recognizing that I am subject to the criminal penalties under Code Section 12-54-44 (B) (6) (a) (i), I declare that I have examined this affidavit and to the best of my knowledge and belief, it is true, correct and complete.

(Seal)

Signature of Nonresident Taxpayer (Owner, Partner or Corporate Officer, when relevant)

Date

If Corporate officer state title:

(Name - Please Print)

Mail to: The company or individual you are contracting with.

# OFFEROR'S CHECKLIST

## *AVOID COMMON BID/PROPOSAL MISTAKES*

Review this checklist prior to submitting your bid/proposal.  
If you fail to follow this checklist, you risk having your bid/proposal rejected.

- DO NOT INCLUDE ANY OF YOUR STANDARD CONTRACT FORMS!
- UNLESS EXPRESSLY REQUIRED, DO NOT INCLUDE ANY ADDITIONAL BOILERPLATE CONTRACT CLAUSES.
- REREAD YOUR ENTIRE BID/PROPOSAL TO MAKE SURE YOUR BID/PROPOSAL DOES NOT TAKE EXCEPTION TO ANY OF THE STATE'S MANDATORY REQUIREMENTS.
- MAKE SURE YOU HAVE PROPERLY MARKED ALL PROTECTED, CONFIDENTIAL, OR TRADE SECRET INFORMATION IN ACCORDANCE WITH THE INSTRUCTIONS ENTITLED: SUBMITTING CONFIDENTIAL INFORMATION. **DO NOT MARK YOUR ENTIRE BID/PROPOSAL AS CONFIDENTIAL, TRADE SECRET, OR PROTECTED! DO NOT INCLUDE A LEGEND ON THE COVER STATING THAT YOUR ENTIRE RESPONSE IS NOT TO BE RELEASED!**
- HAVE YOU PROPERLY ACKNOWLEDGED ALL AMENDMENTS? INSTRUCTIONS REGARDING HOW TO ACKNOWLEDGE AN AMENDMENT SHOULD APPEAR IN ALL AMENDMENTS ISSUED.
- MAKE SURE YOUR BID/PROPOSAL INCLUDES A COPY OF THE SOLICITATION COVER PAGE. MAKE SURE THE COVER PAGE IS SIGNED BY A PERSON THAT IS AUTHORIZED TO CONTRACTUALLY BIND YOUR BUSINESS.
- MAKE SURE YOUR BID/PROPOSAL INCLUDES THE NUMBER OF COPIES REQUESTED.
- CHECK TO ENSURE YOUR BID/PROPOSAL INCLUDES EVERYTHING REQUESTED!
- IF YOU HAVE CONCERNS ABOUT THE SOLICITATION, DO NOT RAISE THOSE CONCERNS IN YOUR RESPONSE! **AFTER OPENING, IT IS TOO LATE! IF THIS SOLICITATION INCLUDES A PRE-BID/PROPOSAL CONFERENCE OR A QUESTION & ANSWER PERIOD, RAISE YOUR QUESTIONS AS A PART OF THAT PROCESS!** PLEASE SEE INSTRUCTIONS UNDER THE HEADING "SUBMISSION OF QUESTIONS" AND ANY PROVISIONS REGARDING PRE-BID/PROPOSAL CONFERENCES.

This checklist is included only as a reminder to help offerors avoid common mistakes.  
Responsiveness will be evaluated against the solicitation, not against this checklist.  
You do not need to return this checklist with your response.



U N I V E R S I T Y O F  
**SOUTH CAROLINA**

**ADDENDUM NO.1**

**TO: All Vendors**

**FROM: Jack Nichols**

**SUBJECT: Solicitation #USC-BVB-1308-JN**  
**Deadline for Responses: Remains The Same**

**DATE: July 31, 2008**

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This addendum No. 1 modifies the Best Value Bid only in the manner and to the extent as stated herein.

**Item One: Questions from Vendors**  
Questions from Vendors:

1. Page 10 / Requirements #20 states that USC will remove and replace all brickwork. Is this for entrance into the building?

Answer: The brickwork is for the entrance for the building.

2. Bid document does not designate where we are required to enter the building.

Answer: They will be required to enter the building through the parking lot side.

3. Are there any site visits required prior to actual installation?

Answer: A site visit is not mandatory.

4. The option for the gutter pin plates in my opinion should be required for better performance of the bulkhead. The documentation says "provide". Does this mean supply only or supply and install? Bid does not state how many would be needed if so.

Answer: Gutter Pins are to be provided and installed. The number of gutter pins should meet the standard requirement for this Bulkhead design.

**BIDDER SHALL ACKNOWLEDGE RECEIPT OF ADDENDUM NO.1 IN THE SPACE PROVIDED BELOW AND RETURN IT WITH THEIR BID RESPONSE. FAILURE TO DO SO MAY SUBJECT BID TO REJECTION.**

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Authorized Signature

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Firm

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Date

EXH. C

**White, John**

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**From:** Michael Anderson [andersonm@llr.sc.gov]  
**Sent:** Tuesday, September 09, 2008 8:26 AM  
**To:** White, John  
**Subject:** RE: Protest of Contract Award Project # USC-BVB-1308-JN

John, I have previously looked at this issue. It has been determined that this is not construction but installation of equipment and does not fall under the classification of construction. If you have any questions feel free to give me a call at 896-4613. Thanks Mike

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**From:** White, John [mailto:jswhite@mmo.sc.gov]  
**Sent:** Monday, September 08, 2008 2:55 PM  
**To:** Michael Anderson  
**Subject:** Protest of Contract Award Project # USC-BVB-1308-JN

Michael:

Materials Management has received a protest from Paddock Construction protesting the award of a contract to Composite Aquatic Innovations, Inc., to provide and install a floating fiberglass bulkhead in a pool at USC. A copy of Paddock's protest is attached to give you a full understanding of the nature of the protest. In short, Paddock protest that Composite is not licensed to perform the work required by the contract and is required to be by the Contractors Licensing Act.

Is Composite required to possess a South Carolina Contractor's License for this work and if so what classification and subclassification is required? To assist you further in answering this question, I have also attached copies of product descriptions from Composite's web site (the bulkhead is manufactured by Stark, a division of Composite) as well as a copy of USC's solicitation. Please let me know if you need further information.

Thank you for your assistance in this matter.

John St. C. White, PE  
State Engineer

9/30/2008

**White, John**

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**From:** White, John  
**Sent:** Monday, September 08, 2008 2:55 PM  
**To:** 'Michael Anderson'  
**Subject:** Protest of Contract Award Project # USC-BVB-1308-JN  
**Attachments:** USC Request for Proposals.pdf; Addendum 1 USC RFP.pdf; Stark Response to RFP.pdf; Protest & Stark Product Description.pdf

Michael:

Materials Management has received a protest from Paddock Construction protesting the award of a contract to Composite Aquatic Innovations, Inc., to provide and install a floating fiberglass bulkhead in a pool at USC. A copy of Paddock's protest is attached to give you a full understanding of the nature of the protest. In short, Paddock protest that Composite is not licensed to perform the work required by the contract and is required to be by the Contractors Licensing Act.

Is Composite required to possess a South Carolina Contractor's License for this work and if so what classification and subclassification is required? To assist you further in answering this question, I have also attached copies of product descriptions from Composite's web site (the bulkhead is manufactured by Stark, a division of Composite) as well as a copy of USC's solicitation. Please let me know if you need further information.

Thank you for your assistance in this matter.

John St. C. White, PE  
State Engineer

9/30/2008



**Martin, Deb**

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**From:** Protest-MMO  
**Sent:** Thursday, August 28, 2008 3:58 PM  
**To:** \_MMO - Procurement; Shealy, Voight  
**Subject:** FW: Protest letter for USC-BVB-1308-JN  
**Attachments:** DHEC Pool Code for South Carolina.pdf; South Carolina Code of Laws Title 40.pdf

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**From:** Michael McDuffie[SMTP:MC DUFFIE@PADDOCKPOOL.COM]  
**Sent:** Thursday, August 28, 2008 3:57:04 PM  
**To:** Protest-MMO  
**Cc:** Don Baker; 'Jack Nichols'  
**Subject:** Protest letter for USC-BVB-1308-JN  
**Auto forwarded by a Rule**

Chief Procurement Officer Materials Management Office  
1201 Main Street, Suite 600, Columbia, SC 29201

Solicitation Number: USC-BVB-1308-JN  
Issue Date: 7/21/08  
Opening Date: 8/6/08  
Awarded to: Composite Aquatic Innovations, Inc. Starkbulkheads

Paddock Construction is filing an official protest against the intent to award the bulkhead replacement (Solicitation # USC-BVB-1308-JN) to Starkbulkhead posted on August 18, 2008. Protest is based on University of South Carolina intent to award a contract to a non-licensed contractor for the State of South Carolina.

We have researched further into South Carolina Code of Laws, (Section 40), and determined the following information. Please read over the attached and highlighted sections from the South Carolina Code of Laws and South Carolina DHEC SECTION R61-51B #10.

Please review the listed points of interest which you need to review before the final bid award. Paddock has been patient and has provided resources and/or research in order to help USC make the appropriate decision under South Carolina Law. We clearly understand that Allen Carter has determined under Procurement Code that this is not construction but its been brought to your attention that by South Carolina Law this project would clearly be defined as construction and must comply with the South Carolina Code of Law sections listed below, I would also pay special attention to Section 40-11-200(B) under the South Carolina Code of Laws.

We making a formal protest based on South Carolina Laws and South Carolina DHEC Codes listed below and highlighted in the attachment.

South Carolina Codes of Laws Title 40, Professions and Occupations

8/29/2008

1. Construction is defined under the South Carolina Code of Laws, Chapter 11, Contractors Article 1 as "means the installation, replacement, or repair of a building, structure, highway, sewer, grading, asphalt or concrete paving, or improvement of any kind to real property(Section 40-11-5-(8))." The bulkhead replacement for USC would fall directly under the definition of Construction as stated by the South Carolina Code of Laws.
2. Licensed contractors is defined as "means an entity that is licensed by the South Carolina Contractor's Licensing Board to engage in general or mechanical contracting within the State (Section 40-11-5-(13))." Paddock Construction was the only bidder the meets the requirements for a licensed contractor for the state of South Carolina.
3. As defined in Section 40-11-30 Licensing Requirements-"No entity or individual may practice as a contractor by performing or offering to perform contracting work for which the total cost of construction is greater than five thousand dollars for general contracting or greater than five thousand dollars for mechanical contracting without a license issued in accordance with this chapter." The cost and description of project is clearly over \$5000.00 and contains both construction cost as well as mechanical cost valued more than \$5000.00.
4. Section 40-11-110 Disciplinary actions; conditions for imposing: civil penalties; reapplication after revocation or cancellation; completion of work in progress; revocation of individual license classification.
  - a. Section 40-11-110-(10) states as follows "entering into a contract with an unlicensed contractor for work to be performed for which a license is required." Entering into a contract with any other bidding provider other than a South Carolina licensed contractor would be indirect violation of this section of the South Carolina State Law. The University of South Carolina would actively and unlawfully be engaged with an unlicensed contractor if the bid was awarded to the current out of state and none licensed vendor.
  - b. Section 40-11-110-(12) states it is unlawful "contracting or offering to contract or submitting a bid while a licensed is under suspension or probation;"
5. Section 40-11-200 (Unlawful practice; penalty)
  - a. Section 40-11-200 (B) states "it is a violation of this chapter for an awarding authority, owner, contractor, or an agent of an authority, owner, or contractor to consider bid, sign a contract, or allow a contractor to begin work unless the bidder or contractor has first obtained the licenses required by this chapter. Bids or contracts submitted by contractors may not be reconsidered or resubmitted to an awarding authority, contractor, or owner if the contractor was not properly licensed at the time of the initial bid or contract was submitted." Paddock Construction was the only bidder that was under all compliances with South Carolina Law.


#### South Carolina DHEC Pool Codes

1. Section R.61-51(B)-10 "Construction Contractor. All new construction and alterations to existing public swimming pools must be performed by a contractor holding a South Carolina license with the appropriate subclassification in accordance with the South Carolina Department of Labor, Licensing and Regulation's General and Mechanical Contracting Act, Chapter 11, Title 40 as amended."

**Michael McDuffie**  
Paddock Construction Co., Inc

8/29/2008

Southeast Director of Renovation and Service  
(O) (803) 980-1901 ext 228  
(F) (803) 980-1902  
(c) (803)493-6736

 <b>UNIVERSITY OF SOUTH CAROLINA</b>	<b>BEST VALUE BID</b>	Solicitation Number	<b>USC-BVB-1235-JN</b>
		Date Printed	<b>7/21/2008</b>
		Date Issued	<b>7/21/2008</b>
		Procurement Officer	<b>Jack Nichols</b>
		Phone	<b>803-777-4115</b>
		E-Mail Address	<b>jvnichol@gwm.sc.edu</b>

DESCRIPTION: Furnish, Deliver, and Install New 10 Lane Air Lift Bulkhead for the Blatt PE Center Natatorium

USING GOVERNMENT AGENCY: UNIVERSITY OF SOUTH CAROLINA

*The Term "Offer" Means Your "Bid" or "Proposal".*

SUBMIT OFFER BY: (Opening Date/Time): **August 6, 2008 at 3:00 pm local time** See "Deadline for Submission of Offer" provision

QUESTIONS MUST BE RECEIVED BY: **July 28, 2008 at 3:00 pm local time** See "Questions From Offerors" provision

NUMBER OF COPIES TO BE SUBMITTED: **One (1) Original and Four (4) Hardcopies Plus One (1) electronic copy**

**Offers must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior.**

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:

MAILING ADDRESS:	PHYSICAL ADDRESS:
University of South Carolina – Purchasing Dept. 1600 Hampton St., Suite 606 Columbia, SC 29208	University of South Carolina – Purchasing Dept. 1600 Hampton St., Suite 606 Columbia, SC 29208

See "Submitting Your Offer" provision

CONFERENCE TYPE: N/A  
DATE & TIME: N/A

LOCATION: N/A

As appropriate, see "Conferences-Pre-Bid/Proposal" & "Site Visit" provisions

<b>AWARD &amp; AMENDMENTS</b>	Award will be posted at the Physical Address stated above on <b>August 8, 2008</b> . The award, this solicitation, and any amendments will be posted at the following web address: <a href="http://purchasing.sc.edu">http://purchasing.sc.edu</a>
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You must submit a signed copy of this form with Your Offer. By submitting a bid or proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date.

NAME OF OFFEROR (Full legal name of business submitting the offer)		<b>OFFEROR'S TYPE OF ENTITY:</b> (Check one)  <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporate entity (not tax-exempt) <input type="checkbox"/> Tax –exempt corporate entity <input type="checkbox"/> Government entity (federal, state, or local) <input type="checkbox"/> Other _____ (See "Signing Your Offer" provision.)
AUTHORIZED SIGNATURE (Person signing must be authorized to submit binding offer to enter contract on behalf of Offeror named above.)		
TITLE (Business title of person signing above)		
PRINTED NAME (Printed name of person signing above)	DATE SIGNED	

Instructions regarding Offeror's name: Any award issued will be issued to, and the contract will be formed with, the entity identified as the offeror above. An offer may be submitted by only one legal entity. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.

STATE OF INCORPORATION (If offeror is a corporation, identify the state of Incorporation.)

TAXPAYER IDENTIFICATION NO.  
(See "Taxpayer Identification Number" provision)

**PAGE TWO**  
(Return Page Two with Your Offer)

HOME OFFICE ADDRESS (Address for offeror's home office / principal place of business)	NOTICE ADDRESS (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause)			
	Area Code	Number	Extension	Facsimile
	E-mail Address			

PAYMENT ADDRESS (Address to which payments will be sent.) (See "Payment" clause)	ORDER ADDRESS (Address to which purchase orders will be sent) (See "Purchase Orders" and "Contract Documents" clauses)
<input type="checkbox"/> Payment Address same as Home Office Address <input type="checkbox"/> Payment Address same as Notice Address (check only one)	<input type="checkbox"/> Order Address same as Home Office Address <input type="checkbox"/> Order Address same as Notice Address (check only one)

<b>ACKNOWLEDGMENT OF AMENDMENTS</b>  Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue.  See "Amendments to Solicitation" Provision	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date

DISCOUNT FOR PROMPT PAYMENT See "Discount for Prompt Payment" clause	10 Calendar Days (%)	20 Calendar Days (%)	30 Calendar Days (%)	____ Calendar Days (%)
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<b>PREFERENCES – SC RESIDENT VENDOR PREFERENCE</b> (June 2005): Section 11-35-1524 provides a preference for offerors that qualify as a resident vendor. A resident vendor is an offeror that (a) is authorized to transact business within South Carolina, (b) maintains an office* in South Carolina, (c) either (1) maintains a minimum \$10,000.00 representative inventory at the time of the solicitation, or (2) is a manufacturer which is headquartered and has at least a ten million dollar payroll in South Carolina, and the product is made or processed from raw materials into a finished end-product by such manufacturer or an affiliate (as defined in section 1563 of the Internal Revenue Code) of such manufacturer, and (d) has paid all assessed taxes. If applicable, preference will be applied as required by law.	<b>OFFERORS REQUESTING THIS PREFERENCE MUST INITIAL HERE.</b> _____  <b>*ADDRESS AND PHONE OF IN-STATE OFFICE</b>  <input type="checkbox"/> In-State Office Address same as Home Office Address <input type="checkbox"/> In-State Office Address same as Notice Address (CHECK ONLY ONE)

<b>PREFERENCES – SC/US END-PRODUCT</b> (June 2005): Section 11-35-1524 provides a preference to vendors offering South Carolina end-products or US end-products, if those products are made, manufactured, or grown in SC or the US, respectively. An end-product is the item identified for acquisition in this solicitation, including all component parts in final form and ready for the use intended. The terms "made," "manufactured," and "grown" are defined by Section 11-35-1524(B). By signing your offer and checking the appropriate space(s) provided and identified on the bid schedule, offeror certifies that the end-product(s) is either made, manufactured or grown in South Carolina, or other states of the United States, as applicable. Preference will be applied as required by law.	<b>IF THIS PREFERENCE APPLIES TO THIS PROCUREMENT, PART VII (BIDDING SCHEDULE) WILL INCLUDE A PLACE TO CLAIM THE PREFERENCE.</b> <b>OFFERORS REQUESTING THIS PREFERENCE MUST CHECK THE APPROPRIATE SPACES ON THE BIDDING SCHEDULE.</b>
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## **Solicitation Outline**

- I. Scope of Solicitation**
- II. Instructions to Offerors**
  - A. General Instructions**
  - B. Special Instructions**
- III. Scope of Work / Specifications**
- IV. Information for Offerors to Submit**
- V. Qualifications**
- VI. Award Criteria**
- VII. Terms and Conditions**
  - A. General**
  - B. Special**
- VIII. Bidding Schedule / Cost Proposal**
- IX. Attachments to Solicitation**

### **I. SCOPE OF SOLICITATION**

ACQUIRE SUPPLIES / EQUIPMENT (January 2006): The purpose of this solicitation is to establish a source or sources of supply for the purchase of new supplies and/or equipment as listed.

MAXIMUM CONTRACT PERIOD — ESTIMATED (January 2006): [INSERT DATE HERE] Dates provided are estimates only. Any resulting contract will begin on the date specified in the notice of award. See clause entitled "Term of Contract – Effective Date / Initial Contract Period".

### **II. INSTRUCTIONS TO OFFERORS – A. GENERAL INSTRUCTIONS**

DEFINITIONS (JANUARY 2006) EXCEPT AS OTHERWISE PROVIDED HEREIN, THE FOLLOWING DEFINITIONS ARE APPLICABLE TO ALL PARTS OF THE SOLICITATION.

AMENDMENT – means a document issued to supplement the original solicitation document.

BUYER – means the Procurement Officer.

CHANGE ORDER - means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual agreement of the parties to the contract.

CONTRACT - See clause entitled "Contract Documents & Order of Precedence."

CONTRACT MODIFICATION – means a written order signed by the Procurement Officer, directing the contractor to make changes which the changes clause of the contract authorizes the Procurement Officer to order without the consent of the contractor.

CONTRACTOR - means the Offeror receiving an award as a result of this solicitation.

COVER PAGE – means the top page of the original solicitation on which the solicitation is identified by number. Offerors are cautioned that Amendments may modify information provided on the Cover Page.

OFFER – means the bid or proposal submitted in response this solicitation. The terms "Bid" and "Proposal" are used interchangeably with the term "Offer."

OFFEROR – means the single legal entity submitting the offer. The term "Bidder" is used interchangeably with the term "Offeror." See bidding provisions entitled "Signing Your Offer" and "Bid/Proposal As Offer To Contract."

ORDERING ENTITY - Using Governmental Unit that has submitted a Purchase Order.

PAGE TWO – means the second page of the original solicitation, which is labeled Page Two.

PROCUREMENT OFFICER – means the person, or his successor, identified as such on the Cover Page.

YOU and YOUR – means Offeror.

SOLICITATION – means this document, including all its parts, attachments, and any Amendments.

STATE – means the Using Governmental Unit(s) identified on the Cover Page.

SUBCONTRACTOR – means any person having a contract to perform work or render service to Contractor as a part of the Contractor's agreement arising from this solicitation.

USING GOVERNMENTAL UNIT – means the unit(s) of government identified as such on the Cover Page. If the Cover Page names a "Statewide Term Contract" as the Using Governmental Unit, the Solicitation seeks to establish a Term Contract [11-35-310(35)] open for use by all South Carolina Public Procurement Units [11-35-4610(5)].

**WORK** - means all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Contract.

**AMENDMENTS TO SOLICITATION (JANUARY 2006)** (a) The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: <http://purchasing.sc.edu>. (b) Offerors shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on Page Two, (3) by letter, or (4) by submitting a bid that indicates in some way that the bidder received the amendment. (c) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

**AWARD NOTIFICATION (JUNE 2006)** Notice regarding any award or cancellation of award will be posted at the location specified on the Cover Page. The date and location of posting will be announced at opening. If the contract resulting from this Solicitation has a total or potential value of fifty thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation. Should the contract resulting from this Solicitation have a potential value of one hundred thousand dollars or more, such notice will be sent to all Offerors responding to the Solicitation and any award will not be effective until the eleventh day after such notice is given.

**BID / PROPOSAL AS OFFER TO CONTRACT (JANUARY 2006)** By submitting Your Bid or Proposal, You are offering to enter into a contract with the Using Governmental Unit(s). Without further action by either party, a binding contract shall result upon final award. Any award issued will be issued to, and the contract will be formed with, the entity identified as the Offeror on the Cover Page. An Offer may be submitted by only one legal entity; "joint bids" are not allowed.

**BID ACCEPTANCE PERIOD (JANUARY 2006)** In order to withdraw Your Offer after the minimum period specified on the Cover Page, You must notify the Procurement Officer in writing.

**BID IN ENGLISH & DOLLARS (JANUARY 2006)** Offers submitted in response to this solicitation shall be in the English language and in US dollars, unless otherwise permitted by the Solicitation.

**CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS (JANUARY 2006)**

(a)(1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-

(i) Offeror and/or any of its Principals-

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;

(B) Have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any public (Federal, state, or local) entity.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

(b) Offeror shall provide immediate written notice to the Procurement Officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) If Offeror is unable to certify the representations stated in paragraphs (a)(1), Offer must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer may terminate the contract resulting from this solicitation for default.

CODE OF LAWS AVAILABLE (JANUARY 2006): The South Carolina Code of Laws, including the Consolidated Procurement Code, is available at <http://www.scstatehouse.net/code/statmast.htm>. The South Carolina Regulations are available at: <http://www.scstatehouse.net/coderegs/statmast.htm>.

COMPLETION OF FORMS / CORRECTION OF ERRORS (JANUARY 2006): All prices and notations should be printed in ink or typewritten. Errors should be crossed out, corrections entered and initialed by the person signing the bid. Do not modify the solicitation document itself (including bid schedule). (Applicable only to offers submitted on paper.)

DEADLINE FOR SUBMISSION OF OFFER (JANUARY 2006) Any offer received after the Procurement Officer of the governmental body or his designee has declared that the time set for opening has arrived, shall be rejected unless the offer has been delivered to the designated purchasing office or the governmental bodies' mail room which services that purchasing office prior to the bid opening. [R.19-445.2070(H)]

DRUG FREE WORK PLACE CERTIFICATION (JANUARY 2006) By submitting an Offer, Contractor certifies that, if awarded a contract, Contractor will comply with all applicable provisions of The Drug-free Workplace Act, Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

DUTY TO INQUIRE (JANUARY 2006) Offeror, by submitting an Offer, represents that it has read and understands the Solicitation and that its Offer is made in compliance with the Solicitation. Offerors are expected to examine the Solicitation thoroughly and should request an explanation of any ambiguities, discrepancies, errors, omissions, or conflicting statements in the Solicitation. Failure to do so will be at the Offeror's risk. Offeror assumes responsibility for any patent ambiguity in the Solicitation that Offeror does not bring to the State's attention.

ETHICS ACT (JANUARY 2006) By submitting an Offer, You certify that You are in compliance with South Carolina's Ethics, Government Accountability, and Campaign Reform Act of 1991, as amended. The following statutes require special attention: (a) Offering, giving, soliciting, or receiving anything of value to influence action of public employee – Section 8-13-705, (b) Recovery of kickbacks – Section 8-13-790, (c) Offering, soliciting, or receiving money for advice or assistance of public official – Section 8-13-720, (d) Use or disclosure of confidential information – Section 8-13-725, and (e) Persons hired to assist in the preparation of specifications or evaluation of bids – Section 8-13-1150.

OMIT TAXES FROM PRICE (JANUARY 2006): Do not include any sales or use taxes in Your price that the State may be required to pay.

PROCUREMENT AGENT (AUG 2004) Authorized Agent. All authority regarding the conduct of this procurement is vested solely with the responsible Procurement Officer. Unless specifically delegated in writing, the Procurement Officer is the only government official authorized to bind the government with regard to this procurement.

PROTESTS (JUNE 2006) Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen days of the date of issuance of the applicable solicitation document at issue. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of award is posted in accordance with this code. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the appropriate Chief Procurement Officer within the time provided. See clause entitled "Protest-CPO". [§ 11-35-4210]

PUBLIC OPENING (JANUARY 2006) Offers will be publicly opened at the date / time and at the location identified on the Cover Page, or last Amendment, whichever is applicable

QUESTIONS FROM OFFERORS (JANUARY 2006): (a) Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing. Questions must be received by the Procurement Officer no later than five (5) days prior to opening unless otherwise stated on the Cover Page. Label any communication regarding your questions with the name of the procurement officer, and the solicitation's title and number. Oral explanations or instructions will not be binding. Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors. (b) The State seeks to permit maximum practicable competition. Offerors are urged to advise the Procurement Officer – as soon as possible – regarding any aspect of this procurement, including any aspect of the Solicitation that unnecessarily or inappropriately limits full and open competition.



REJECTION/CANCELLATION (JANUARY 2006) The State may cancel this solicitation in whole or in part. The State may reject any or all proposals in whole or in part. [SC Code Section 11-35-1710 & R.19-445.2065.]

#### RESPONSIVENESS / IMPROPER OFFERS (JANUARY 2006)

(a) Bid as Specified. Offers for supplies or services other than those specified will not be considered unless authorized by the Solicitation.

(b) Multiple Offers. Offerors may submit more than one Offer, provided that each Offer has significant differences other than price. Each separate Offer must satisfy all Solicitation requirements. If this solicitation is an Invitation for Bids, each separate offer must be submitted as a separate document. If this solicitation is a Request for Proposals, multiple offers may be submitted as one document, provided that you clearly differentiate between each offer and you submit a separate cost proposal for each offer, if applicable.

(c) Responsiveness. Any Offer which fails to conform to the material requirements of the Solicitation may be rejected as nonresponsive. Offers which impose conditions that modify material requirements of the Solicitation may be rejected. If a fixed price is required, an Offer will be rejected if the total possible cost to the State cannot be determined. Offerors will not be given an opportunity to correct any material nonconformity. Any deficiency resulting from a minor informality may be cured or waived at the sole discretion of the Procurement Officer. [R.19-445.2070 and Section 11-35-1520(13)]

(d) Price Reasonableness: Any offer may be rejected if the Procurement Officer determines in writing that it is unreasonable as to price. [R. 19-445.2070].

(e) Unbalanced Bidding. The State may reject an Offer as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the State even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

RESTRICTIONS APPLICABLE TO OFFERORS (JANUARY 2006) Violation of these restrictions may result in disqualification of your offer, suspension or debarment, and may constitute a violation of the state Ethics Act. (a) After issuance of the solicitation, *you agree not to discuss this procurement activity in any way with the Using Governmental Unit or its employees, agents or officials*. All communications must be solely with the Procurement Officer. This restriction may be lifted by express written permission from the Procurement Officer. This restriction expires once a contract has been formed. (b) Unless otherwise approved in writing by the Procurement Officer, *you agree not to give anything to any Using Governmental Unit*

SIGNING YOUR OFFER (JANUARY 2006) Every Offer must be signed by an individual with actual authority to bind the Offeror. (a) If the Offeror is an individual, the Offer must be signed by that individual. If the Offeror is an individual doing business as a firm, the Offer must be submitted in the firm name, signed by the individual, and state that the individual is doing business as a firm. (b) If the Offeror is a partnership, the Offer must be submitted in the partnership name, followed by the words "by its Partner," and signed by a general partner. (c) If the Offeror is a corporation, the Offer must be submitted in the corporate name, followed by the signature and title of the person authorized to sign. (d) An Offer may be submitted by a joint venturer involving any combination of individuals, partnerships, or corporations. If the Offeror is a joint venture, the Offer must be submitted in the name of the Joint Venture and signed by every participant in the joint venture in the manner prescribed in paragraphs (a) through (c) above for each type of participant. (e) If an Offer is signed by an agent, other than as stated in subparagraphs (a) through (d) above, the Offer must state that it has been signed by an Agent. Upon request, Offeror must provide proof of the agent's authorization to bind the principal.

STATE OFFICE CLOSINGS (JANUARY 2006) If an emergency or unanticipated event interrupts normal government processes so that offers cannot be received at the government office designated for receipt of bids by the exact time specified in the solicitation, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal government processes resume. In lieu of an automatic extension, an Amendment may be issued to reschedule bid opening. If state offices are closed at the time a pre-bid or pre-proposal conference is scheduled, an Amendment will be issued to reschedule the conference. Useful information may be available at: [http://www.scmd.org/scgovweb/weather\\_alert.htm](http://www.scmd.org/scgovweb/weather_alert.htm).

SUBMITTING CONFIDENTIAL INFORMATION (AUGUST 2002): (An overview is available at [www.procurement.sc.gov](http://www.procurement.sc.gov)) For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror

submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected! If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, its officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.)

**SUBMITTING YOUR OFFER OR MODIFICATION (JANUARY 2006)** (a) Offers and offer modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) – (1) Addressed to the office specified in the Solicitation; and (2) Showing the time and date specified for opening, the solicitation number, and the name and address of the bidder. (b) If you are responding to more than one solicitation, each offer must be submitted in a different envelope or package. (c) Each Offeror must submit the number of copies indicated on the Cover Page. (d) Offerors using commercial carrier services shall ensure that the Offer is addressed and marked on the outermost envelope or wrapper as prescribed in paragraphs (a)(1) and (2) of this provision when delivered to the office specified in the Solicitation. (e) Facsimile or e-mail offers, modifications, or withdrawals, will not be considered unless authorized by the Solicitation. (f) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

**TAX CREDIT FOR SUBCONTRACTING WITH MINORITY FIRMS (JANUARY 2006)** Pursuant to Section 12-6-3350, taxpayers, who utilize certified minority subcontractors, may take a tax credit equal to 4% of the payments they make to said subcontractors. The payments claimed must be based on work performed directly for a South Carolina state contract. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Taxpayers must maintain evidence of work performed for a State contract by the minority subcontractor. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. The subcontractor must be certified as to the criteria of a "Minority Firm" by the Governor's Office of Small and Minority Business Assistance (OSMBA). Certificates are issued to subcontractors upon successful completion of the certification process. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498. Reference: SC §11-35-5010 – Definition for Minority Subcontractor & SC §11-35-5230 (B) – Regulations for Negotiating with State Minority Firms.

**TAXPAYER IDENTIFICATION NUMBER (JANUARY 2006):** (a) If Offeror is owned or controlled by a common parent as defined in paragraph (b) of this provision, Offeror shall submit with its Offer the name and TIN of common parent. (b) Definitions: "Common parent," as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member. "Taxpayer Identification Number (TIN)," as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number. (c) If Offeror does not have a TIN, Offeror shall indicate if either a TIN has been applied for or a TIN is not required. If a TIN is not required, indicate whether (i) Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States; (ii) Offeror is an agency or instrumentality of a state

or local government; (iii) Offeror is an agency or instrumentality of a foreign government; or (iv) Offeror is an agency or instrumentality of the Federal Government.

**WITHDRAWAL OR CORRECTION OF OFFER (JANUARY 2006)** Offers may be withdrawn by written notice received at any time before the exact time set for opening. If the Solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for opening. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. The withdrawal and correction of Offers is governed by S.C. Code Section 11-35-1520 and Regulation 19-445.2085.

## **II. INSTRUCTIONS TO OFFERORS – B. SPECIAL INSTRUCTIONS**

**DISCUSSIONS WITH BIDDERS (JANUARY 2006)** After opening, the Procurement Officer may, in his sole discretion, initiate discussions with you to discuss your bid. Discussions are possible only if your bid is apparently responsive and only for the purpose of clarification to assure your full understanding of the solicitation's requirements. Any discussions will be documented in writing and shall be included with the bid.

**PROTEST – CPO – MMO ADDRESS (JUNE 2006):** Any protest must be addressed to the Chief Procurement Officer, Materials Management Office, and submitted in writing (a) by email to [protest-mmommo@mmo.state.sc.us](mailto:protest-mmommo@mmo.state.sc.us) (b) by facsimile at 803-737-0639, or (c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

## **III. SCOPE OF WORK / SPECIFICATIONS**

**Furnish, Deliver, and Install a 10 Lane Stark Air Lift Bulkhead for Blatt PE Center Natatorium per attached minimum specifications:**

### **Part 1 – General**

#### **A. Intent**

- 1) The intent of this specification is to describe a swimming pool bulkhead manufactured by Starkbulkheads that is designed to be moved within a pool structure to provide varying competitive swimming course lengths and or divide the pool for varying aquatic programs that is fabricated of materials that are permanently resistant to chemicals and air conditions that are present in a swimming pool environment.

#### **B. Performance**

- 1) The bulkhead shall be engineered to sustain the required loads and maintain the particular tolerances of the course length while providing a safe and stable platform for swimmers and officials.
- 2) The bulkhead shall be designed for regular daily movement between various locations. The bulkhead will be capable of being moved manually by two attendants of normal build and strength at a speed of at least 10 feet per minute.

#### **C. Standards**

- 1) The bulkhead shall be designed to conform to FINA, NCAA, and US Swimming Rules.

### **Part 2 – Product**

#### **A. Design**

- 1) The bulkhead shall consist of a one piece double box construction type that spans the width of the swimming pool and extends out over the gutter on the sides of the pool and matches the end walls.
- 2) The bulkhead shall be designed to support a unified live load with ½" maximum deflection in addition to all dead loads of 5600 lbs on bulkhead walk area without the assistance of constant foam or additional air to assist with the support of such load. The Safety Factor for all live and dead loads shall be at least 10. In addition the bulkhead shall be designed to withstand a uniform lateral live load of at least 30 pounds per linear foot and a point load of at least 500 pounds at the center with a maximum deflection of ½". Racing cup anchors shall be designed to resist pullout loads of at least 400 pounds each.
- 3) Starkbulkheads will provide the owner a full set of shop drawings (submittals) for review by the owner or his representatives showing design, dimensions, features, special conditions for the installation or preparation of installation.

#### **B. Fabrication**

- 1) The bulkhead shall be completely shop fabricated in one piece.
- 2) The bulkhead shall be entirely constructed out of vinyl ester resin with a vinyl ester pigmented gelcoat outer layer that includes a UV inhibitor.

### **C. Materials and Components**

- 1) The top of the bulkhead shall be designed and used as a walk way and houses all anchorage points for starting blocks, stanchions, and timing equipment.
- 2) Starting platform stanchion anchors shall be provided in the deck for the installation of owner chosen and furnished starting platforms. The anchors only are to be manufactured and provided by Starkbulkheads. The anchors are to be of type 316L stainless steel and mount to the top deck and travel down through the water line shelf to prevent any deflection under the maximum loading conditions recommended by the take off platform manufacturer.
- 3) All horizontal and vertical field surfaces of the bulkhead shall be of non-skid surface.
- 4) Each lane of the bulkhead shall feature hand holds/flow through openings at waterline to allow for 100% of waves to pass through the bulkhead eliminating wave bounce back. Size of opening depends on length of the lane minus -18" for lane rope anchors x 6" tall.
- 5) The bulkhead shall have black non skid targets and conform to FINA and NCAA regulations unless otherwise noted.
- 6) Racing lane line anchors shall be provided at waterline between the targets and be designed to accept the lane line anchors with no deflection to the bulkhead. Anchors to resist a pullout load of at least 400 pounds.
- 7) Water polo rope anchors shall be provided in the flow through area for easy access from either side of the bulkhead. Anchors to resist a pullout load of at least 400 pounds.
- 8) Bulkhead shall optionally feature alternate lane line anchors for additional lanes for practice purposes to be located in the flow through area for easy access from either side of the bulkhead. Anchors to resist a pullout load of at least 400 pounds.
- 9) Bulkhead shall optionally feature toe-ledges located at the bottom of bulkhead centered on the target and shall allow water to flow freely through the bulkhead for ease of movement.
- 10) A timing system cable tray shall be molded in under the top deck/walkway of the bulkhead.
- 11) Access hatches shall be included at both ends in the deck of the bulkhead to provide access to the air injection valves, anchor mechanisms, inspection of the interior, and to allow for installation of wiring in the cable tray.
- 12) Fiberglass locking pins and adjustment plates shall be provided on both ends of the bulkhead which shall firmly anchor the bulkhead against any movement from loads imposed by lane lines or by swimmers during competition and have a shearing force of at least 5500 lbs. The pin adjustment plates shall provide a minimum of 1-1/2" adjustment to precisely establish the competition course. (anchorage points in pool or gutter system to be provided by others unless Stark is responsible for installation).
- 13) Weight bearing carriage assemblies shall be fabricated into the structure at each end of the bulkhead that extends out over/into the gutter or pool deck. Each assembly shall incorporate UHMWP (ultra high molecular weight polyethylene) bearing pads that are designed to support the total weight of the bulkhead while in dry dock.
- 14) Internal air chambers will be provided as means of reducing the static weight and initial inertial resistance. Moving the bulkheads shall be easily accomplished by one person at each end of the bulkhead. The Internal air chambers will be constructed so that when adding air volume to raise and move the bulkhead for change in position the bulkhead shall have the means to balance and eliminate the need for removal of the starting platforms.
- 15) Bulkhead shall glide freely on UHMWP (ultra high molecular weight polyethylene) guide pads at both gutter lip and side walls to prevent damage to pool during movement.
- 16) Removable guard rails shall be provided at both ends of the bulkhead. Rails shall be custom fabricated of one continuous length of tubing. The tubing shall be of type 316 stainless steel, 1.90 inch OD x .145 inch wall thickness polished to 320 grit finish.
- 17) A Portable leaf blower/inflation device to be provided for inflation of air chambers for movement.

## **Part 3 – Execution**

### **A. Installation**

- 1) The bulkhead shall be fabricated, delivered, and installed in one piece.
- 2) The entire system shall be inspected prior to shipment to verify compliance with the fabrication drawings and quality of workmanship requirements.
- 3) Installation shall be performed per manufacturers instruction. Manufacturer shall provide factory trained and experienced personnel for coordination, consultation, and instruction for the actual bulkhead delivery and for training of the Owner's personnel in the use, operation, and maintenance of the bulkhead. As well as provide necessary instruction and coordination as required to coordinate anchorage installation in pool wall or deck by others unless Stark is responsible for installation.
- 4) An adequate and easily accessible staging area is to be provided by owner immediately adjacent to the designated entry portal that shall be of suitable size to allow passage of the bulkhead with two forklifts and the length of the bulkhead without extreme measures.

- 5) The installation shall be true, level and plumb with the existing structure to permit full range of movement.
- 6) Suitable means of anchoring the bulkhead to be provided by others to resist all dead and live load components in the gutter system, pool deck, or pool wall unless Stark is responsible for installation. Racecourse dimensions shall be field certified in compliance with the competitive standards having jurisdiction and submitted to the owner in writing by the certifying engineer or land survey.
- 7) During installation protection shall be provided for the existing deck, pool walls, pool floor, and general building construction.
- 8) The bulkhead shall be self supporting, not requiring jacks for support when the water is removed from the pool. The bulkhead shall be placed only where the gutter system has added bracing to support bulkhead whenever the pool is empty.
- 9) The bulkhead shall not be moved until water is in the pool and at the level of the gutter lip.
- 10) The exposed surfaces will be free of all imperfections or irregularities. A field inspection by the Owner will be conducted upon completion of the installation to ensure compliance before acceptance.

#### **B. Demonstration**

- 1) Starkbulkheads or it's representative will provide the owner's personnel with use, operation, and maintenance instructions.
- 2) Upon completion/installation Starkbulkheads shall provide a full set of closing documents including final construction drawings that show all the features of the system, complete dimensional details showing proper sizing and locations, operating maintenance manual, and warranty.

#### **Part 4 – Warranties**

- 1) Manufacturer and installer guarantees that on completion of the installation the bulkhead will move freely from one location to the other, providing the pool walls are straight and parallel and do not vary more than plus or minus  $\pm 1/2$ " and the bulkhead will not rack or bind when moved in accordance with the manufacturers operating instruction.
- 2) The bulkhead shall be guaranteed by Stark for workmanship, materials, and performance for a period of three (3) years when used in accordance with installation and operation instructions. This warranty shall not include or cover abusive or improper treatment to the bulkhead by others either during construction or operation.
- 3) The entire bulkhead shall be guaranteed with a non pro-rated warranty against structural defects to which changes the structural requirements for a period of twenty five (25) years following the installation. This warranty shall not include or cover abusive or improper treatment to the bulkhead by others either during construction or operation.

#### **Requirements**

1. One fiberglass composite bulkhead approximately four (4) feet wide, four feet six inches (4'6") to five feet (5') tall, and seventy eight feet (78') long.
2. One piece "monolithic" construction.
3. Twenty (20) starting platform stanchion anchors (std dual post style).
4. Ten feet seven inches (10'7") lane (one side only) with five feet six inches (5'6") X six inches (6") (both sides) flow through openings per lane at waterline.
5. Eleven (11) racing lane line cup anchors (one side only).
6. Ten (10) black non-skid targets (one side only).
7. White non-skid field surfaces.
8. Two (2) stainless steel removable handrails (one at each end).
9. Two (2) access hatches to facilitate flotation valves and timing tray (one at each end).
10. Two (2) locking pins with adjustment plates inside bulkhead (one at each end).
11. Two (2) stanchion anchors to be used for backstroke or false start flags.
12. One (1) timing cable tray down the length of bulkhead for timing cables.
13. Internal air flotation chambers to ease movement of bulkhead by two people.
14. One (1) blower to inflate air flotation chambers.
15. Instruction and maintenance manuals.
16. Price must include all freight allowance to include tailgate delivery to the project site.
17. Three (3) year material and workmanship warranty.
18. Twenty five (25) year structural warranty.
19. Must remove and dispose of old bulkhead.
20. USC will remove and replace all brickwork.
21. Optional: Provide gutter pin plate receptacles, if needed, (two for each "parking" location)

#### **IV. INFORMATION FOR OFFERORS TO SUBMIT**

INFORMATION FOR OFFERORS TO SUBMIT – GENERAL (JANUARY 2006): Offeror shall submit a signed Cover Page and Page Two. Offeror should submit all other information and documents requested in this part and in parts II.B. Special Instructions; III. Scope of Work; V. Qualifications; VIII. Bidding Schedule/Price Proposal; and any appropriate attachments addressed in section IX. Attachments to Solicitations.

#### **V. QUALIFICATIONS**

QUALIFICATION OF OFFEROR (JANUARY 2006): To be eligible for award of a contract, a prospective contractor must be responsible. In evaluating an Offeror's responsibility, the State Standards of Responsibility [R.19-445.2125] and information from any other source may be considered. An Offeror must, upon request of the State, furnish satisfactory evidence of its ability to meet all contractual requirements. Unreasonable failure to supply information promptly in connection with a responsibility inquiry may be grounds for determining that you are ineligible to receive an award. S.C. Code Section 11-35-1810.

#### **VI. AWARD CRITERIA**

AWARD CRITERIA – BEST VALUE BIDS (JANUARY 2006): Award will be made to the highest ranked, responsive and responsible offeror whose offer is determined to be the most advantageous to the State.

EVALUATION FACTORS – BEST VALUE BID (JANUARY 2006) Offers will be evaluated using only the factors stated below. Numerical weightings are provided for each evaluation factor. All evaluation factors, other than cost (which must be at least 60%), will be considered prior to determining the effect of cost on the score for each offeror. Once evaluation is complete, all responsive offerors will be ranked from most advantageous to least advantageous.

Cost: Total cost associated with the furnishing, delivery, and installation of the new bulkhead as specified herein.

Experience in providing Air Lift Bulkheads at other Division I-A Institutions and professional organizations:  
Provide documentation from three (3) projects of similar scope and complexity

References: Provide references from the above projects. Include current contact information (Telephone/fax/email). USC reserves the right to contact these references.

Reliability of Delivery and an Implementation Schedule

- a. Include a signed letter of understanding of the scope of the work to be done under this contract.
- b. Provide a detailed plan for implementation of this project.

60 Points      Cost

20 Points      Experience in providing Air lift Bulkheads of this nature in Division I-A  
Institutions and professional organizations

10 Points      References

10 Points      Reliability of Delivery and Implementation Schedule

## VII. TERMS AND CONDITIONS – A. GENERAL

**ASSIGNMENT (JANUARY 2006):** No contract or its provisions may be assigned, sublet, or transferred without the written consent of the Procurement Officer.

**BANKRUPTCY (JANUARY 2006):** (a) Notice. In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Using Governmental Unit. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all State contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract. (b) Termination. This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy.

**CHOICE-OF-LAW (JANUARY 2006):** The Agreement, any dispute, claim, or controversy relating to the Agreement, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation.

**CONTRACT DOCUMENTS & ORDER OF PRECEDENCE (JANUARY 2006):** (a) Any contract resulting from this solicitation shall consist of the following documents: (1) a Record of Negotiations, if any, executed by you and the Procurement Officer, (2) documentation regarding the clarification of an offer [e.g., 11-35-1520(8) or 11-35-1530(6)], if applicable, (3) the solicitation, as amended, (4) modifications, if any, to your offer, if accepted by the Procurement Officer, (5) your offer, (6) any statement reflecting the state's final acceptance (a/k/a "award"), and (7) purchase orders. These documents shall be read to be consistent and complimentary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. (b) The terms and conditions of documents (1) through (6) above shall apply notwithstanding any additional or different terms and conditions in either (i) a purchase order or other instrument submitted by the State or (ii) any invoice or other document submitted by Contractor. Except as otherwise allowed herein, the terms and conditions of all such documents shall be void and of no effect. (c) No contract, license, or other agreement containing contractual terms and conditions will be signed by any Using Governmental Unit. Any document signed or otherwise agreed to by persons other than the Procurement Officer shall be void and of no effect.

### **DISCOUNT FOR PROMPT PAYMENT (JANUARY 2006)**

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the state annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

**DISPUTES (JANUARY 2006):** (1) Choice-of-Forum. All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the Government regarding the Agreement is not a waiver of either the Government's sovereign immunity or the Government's immunity under the Eleventh Amendment of the United States Constitution. As used in this paragraph, the term "Agreement" means any transaction or agreement arising out of, relating to, or contemplated by the solicitation. (2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided as the Notice Address on Page Two or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

**EQUAL OPPORTUNITY (JANUARY 2006).** Contractor is referred to and shall comply with all applicable provisions, if any, of Title 41, Part 60 of the Code of Federal Regulations, including but not limited to Sections 60-1.4, 60-4.2, 60-4.3, 60-250.5(a), and 60-741.5(a), which are hereby incorporated by reference.

**FALSE CLAIMS (JANUARY 2006):** According to the S.C. Code of Laws § 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.

**FIXED PRICING REQUIRED (JANUARY 2006):** Any pricing provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit contractor from offering lower pricing after award.

**NON-INDEMNIFICATION (JANUARY 2006):** Any term or condition is void to the extent it requires the State to indemnify anyone.

**NOTICE (JANUARY 2006):** (A) After award, any notices shall be in writing and shall be deemed duly given (1) upon actual delivery, if delivery is by hand, (2) upon receipt by the transmitting party of automated confirmation or answer back from the recipient's device if delivery is by telex, telegram, facsimile, or electronic mail, or (3) upon deposit into the United States mail, if postage is prepaid, a return receipt is requested, and either registered or certified mail is used. (B) Notice to contractor shall be to the address identified as the Notice Address on Page Two. Notice to the state shall be to the Procurement Officer's address on the Cover Page. Either party may designate a different address for notice by giving notice in accordance with this paragraph.

**PAYMENT (JANUARY 2006):** (a) The Using Governmental Unit shall pay the Contractor, after the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, including the purchase order, payment shall not be made on partial deliveries accepted by the Government. (b) Unless the purchase order specifies another method of payment, payment will be made by check. (c) Payment and interest shall be made in accordance with S.C. Code Section 11-35-45. Contractor waives imposition of an interest penalty unless the invoice submitted specifies that the late penalty is applicable.

**PUBLICITY (JANUARY 2006):** Contractor shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of customers, without the prior written approval of the Procurement Officer.

**PURCHASE ORDERS (JANUARY 2006):** Contractor shall not perform any work prior to the receipt of a purchase order from the using governmental unit. The using governmental unit shall order any supplies or services to be furnished under this contract by issuing a purchase order. Purchase orders may be used to elect any options available under this contract, e.g., quantity, item, delivery date, payment method, but are subject to all terms and conditions of this contract. Purchase orders may be electronic. No particular form is required. An order placed pursuant to the purchasing card provision qualifies as a purchase order.

**SETOFF (JANUARY 2006)** The state shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the state with regard to this contract, any other contract with any state department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the state for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

**SURVIVAL OF OBLIGATIONS (JANUARY 2006):** The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this contract shall survive such termination, cancellation, rejection, or expiration, including, but not limited to, the rights and obligations created by the following clauses: Indemnification - Third Party Claims, Intellectual Property Indemnification, and any provisions regarding warranty or audit.

**TAXES (JANUARY 2006):** Any tax the contractor may be required to collect or pay upon the sale, use or delivery of the products shall be paid by the State, and such sums shall be due and payable to the contractor upon acceptance. Any personal property taxes levied after delivery shall be paid by the State. It shall be solely the State's obligation, after payment to contractor, to challenge the applicability of any tax by negotiation with, or action against, the taxing authority. Contractor agrees to refund any tax collected, which is subsequently determined not to be proper and for which a refund has been paid to contractor by the taxing authority. In the event that the contractor fails to pay, or delays in paying, to any taxing authorities, sums paid by the State to contractor, contractor shall be liable to the State for any loss (such as the assessment of additional interest) caused by virtue of this failure or delay. Taxes based on Contractor's net income or assets shall be the sole responsibility of the contractor.



**TERMINATION DUE TO UNAVAILABILITY OF FUNDS (JANUARY 2006)** Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. In the event of a cancellation pursuant to this paragraph, contractor will be reimbursed the resulting unamortized, reasonably incurred, nonrecurring costs. Contractor will not be reimbursed any costs amortized beyond the initial contract term.

**THIRD PARTY BENEFICIARY (JANUARY 2006)** This Contract is made solely and specifically among and for the benefit of the parties hereto, and their respective successors and assigns, and no other person will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Contract as a third party beneficiary or otherwise.

**WAIVER (JANUARY 2006)** The State does not waive any prior or subsequent breach of the terms of the Contract by making payments on the Contract, by failing to terminate the Contract for lack of performance, or by failing to strictly or promptly insist upon any term of the Contract. Only the Procurement Officer has actual authority to waive any of the State's rights under this Contract. Any waiver must be in writing.

## **VII. TERMS AND CONDITIONS – B. SPECIAL**

**CISG (JAN 2006):** The parties expressly agree that the UN Convention on the International Sale of Goods shall not apply to this agreement.

**COMPLIANCE WITH LAWS (JAN 2006):** During the term of the contract, contractor shall comply with all applicable provisions of laws, codes, ordinances, rules, regulations, and tariffs.

**DEFAULT (JAN 2006):**

(a)(1) The State may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to-

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or
- (iii) Perform any of the other material provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The State's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Procurement Officer) after receipt of the notice from the Procurement Officer specifying the failure.

(b) If the State terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Procurement Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the State in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the State may require the Contractor to transfer title and deliver to the State, as directed by the Procurement Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing

materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Procurement Officer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.

(f) The State shall pay contract price for completed supplies delivered and accepted. The Contractor and Procurement Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property; if the parties fail to agree, the Procurement Officer shall set an amount subject to the Contractor's rights under the Disputes clause. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the Procurement Officer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the termination had been issued for the convenience of the State. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under the Disputes clause.

(h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this contract.

HIPAA LAW: The Contractor agrees that to the extent that some or all of the activities within the scope of this Contract are subject to the Health Insurance Portability Accountability Act of 1996, P.L. 104-91, as amended ("HIPAA"), or its implementing regulations, it will comply with the HIPAA requirements and will execute such agreements and practices as the University of South Carolina may require to ensure compliance. Additional information may be viewed at: <http://www.sc.edu/hipaa/>

INDEMNIFICATION - THIRD PARTY CLAIMS (JAN 2006): Notwithstanding any limitation in this agreement, Contractor shall defend and indemnify the State of South Carolina, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all suits or claims of any nature (and all damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities attributable thereto) by any third party which arise out of, or result in any way from, any defect in the goods or services acquired hereunder or from any act or omission of Contractor, its subcontractors, their employees, workmen, servants or agents. Contractor shall be given written notice of any suit or claim. State shall allow Contractor to defend such claim so long as such defense is diligently and capably prosecuted through legal counsel. State shall allow Contractor to settle such suit or claim so long as (i) all settlement payments are made by (and any deferred settlement payments are the sole liability of) Contractor, and (ii) the settlement imposes no non-monetary obligation upon State. State shall not admit liability or agree to a settlement or other disposition of the suit or claim, in whole or in part, without the prior written consent of Contractor. State shall reasonably cooperate with Contractor's defense of such suit or claim. The obligations of this paragraph shall survive termination of the parties' agreement.

INTELLECTUAL PROPERTY INFRINGEMENT (JAN 2006) (a) Without limitation and notwithstanding any provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the State, its instrumentalities, agencies, departments, boards, political subdivisions and all their respective officers, agents and employees against all actions, proceedings or claims of any nature (and all damages, settlement payments, attorneys' fees (including inside counsel), costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving an IP right related to an acquired item. State shall allow Contractor to defend such claim so long as the defense is diligently and capably prosecuted. State shall allow Contractor to settle such claim so long as (i) all settlement payments are made by Contractor, and (ii) the settlement imposes no non-monetary obligation upon State. State shall reasonably cooperate with Contractor's defense of such claim. (b) In the event an injunction or order shall be obtained against State's use of any acquired item, or if in Contractor's opinion, the acquired item is likely to become the subject of a claim of infringement or violation of an IP right, Contractor shall, without in any way limiting the foregoing, and at its expense, either: (1) procure for State the right to continue to use, or have used, the acquired item, or (2) replace or modify the acquired item so that it becomes non-infringing but only if the modification or replacement does not adversely affect the specifications for the acquired item or its use by State. If neither (1) nor (2), above, is practical, State may require that Contractor remove the acquired item from State, refund to State any charges paid by State therefor, and take all steps necessary to have State released from any further liability. (c) Contractor's obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Contractor's compliance with specifications furnished by the State unless Contractor knew its compliance with the State's specifications would infringe an IP right, or (ii) that the claim is caused by Contractor's compliance with specifications furnished by the State if the State knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor. (d) As used in this paragraph, these terms are defined as follows: "IP right(s)" means a patent, copyright, trademark, trade secret, or any other proprietary right.

"Acquired item(s)" means the rights, goods, or services furnished under this agreement. "Specification(s)" means a detailed, exact statement of particulars such as a statement prescribing materials, dimensions, and quality of work. (e) Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement.

PRICING DATA – AUDIT – INSPECTION (JAN 2006) [Clause Included Pursuant to § 11-35-1830, - 2210, & -2220] (a) Cost or Pricing Data. Upon Procurement Officer's request, you shall submit cost or pricing data, as defined by 48 C.F.R. § 2.101 (2004), prior to either (1) any award to contractor pursuant to 11-35-1530 or 11-35-1560, if the total contract price exceeds \$500,000, or (2) execution of a change order or contract modification with contractor which exceeds \$100,000. Your price, including profit or fee, shall be adjusted to exclude any significant sums by which the state finds that such price was increased because you furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date agreed upon between parties. (b) Records Retention. You shall maintain your records for three years from the date of final payment, or longer if requested by the chief Procurement Officer. The state may audit your records at reasonable times and places. As used in this subparagraph (b), the term "records" means any books or records that relate to cost or pricing data submitted pursuant to this clause. In addition to the obligation stated in this subparagraph (b), you shall retain all records and allow any audits provided for by 11-35-2220(2). (c) Inspection. At reasonable times, the state may inspect any part of your place of business which is related to performance of the work. (d) Instructions – Certification. When you submit data pursuant to subparagraph (a), you shall (1) do so in accordance with the instructions appearing in Table 15-2 of 48 C.F.R. § 15.408 (2004) (adapted as necessary for the state context), and (2) submit a Certificate of Current Cost or Pricing Data, as prescribed by 48 CFR § 15.406-2(a) (adapted as necessary for the state context). (e) Subcontracts. You shall include the above text of this clause in all of your subcontracts. (f) Nothing in this clause limits any other rights of the state.

PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT: The University of South Carolina requires that all contractual activities to be in compliance with local, state and federal mandates concerning "protection of human health and the environment". Any contractor doing business with the University will be required to document compliance and to specify prudent practices used by the contractor to address applicable mandates including, but not restricted to "the Hazard Communication Standard" OSHA CFR 1910.1200 (SCRR Article 1, 71-1910.1200). By submission of this bid, the vendor agrees to take all necessary steps to ensure compliance with these requirements.

Furnish, deliver and install new supplies/equipment complying with the enclosed description and/or specifications and conditions as applicable to this bid notice. (SPM013)

The specifications listed herein are not to be considered restrictive to one source of supply. However, items offered must be equal in quality and performance. The offeror must include with his bid/quote, supporting product data sufficient for the University to determine equality and acceptability. The right is reserved to reject any offering in which the items offered are considered unsatisfactory in any manner. The University will determine if minor deviations from the listed features are acceptable. (SPM022)

Award will be made to one vendor for the entire quantity. (SPM034)

Deliveries shall be FOB Delivered and Installed. (SPM056)

It shall be the successful vendor's responsibility to dispose of all wrappings, crating and other disposable materials pertaining to this contract at the end of each working day and upon completion of installation. (SCM025)

# VIII. BIDDING SCHEDULE / PRICE-BUSINESS PROPOSAL

Total costs to furnish, deliver, and install  
a new air lift bulkhead and removal/disposal of  
Old bulkhead as specified herein.

\$ \_\_\_\_\_

**Total Cost** \$ \_\_\_\_\_

Optional: Provide gutter pin plate receptacles, if needed,.  
(two for each "parking" location)

\$ \_\_\_\_\_

Please provide a break down of cost in the following categories:

Materials \$ \_\_\_\_\_

Labor \$ \_\_\_\_\_

Any additional charges/fees \$ \_\_\_\_\_

Company Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

### IMPORTANT TAX NOTICE - NONRESIDENTS ONLY

Withholding Requirements for Payments to Nonresidents: Section 12-8-550 of the South Carolina Code of Laws requires persons hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within South Carolina to withhold 2% of each payment made to the nonresident. The withholding requirement does not apply to (1) payments on purchase orders for tangible personal property when the payments are not accompanied by services to be performed in South Carolina, (2) nonresidents who are not conducting business in South Carolina, (3) nonresidents for contracts that do not exceed \$10,000 in a calendar year, or (4) payments to a nonresident who (a) registers with either the S.C. Department of Revenue or the S.C. Secretary of State and (b) submits a Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to the person letting the contract.

The withholding requirement applies to every governmental entity that uses a contract ("Using Entity"). Nonresidents should submit a separate copy of the Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to every Using Entity that makes payment to the nonresident pursuant to this solicitation. Once submitted, an affidavit is valid for all contracts between the nonresident and the Using Entity, unless the Using Entity receives notice from the Department of Revenue that the exemption from withholding has been revoked.

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Section 12-8-540 requires persons making payment to a nonresident taxpayer of rentals or royalties at a rate of \$1,200.00 or more a year for the use of or for the privilege of using property in South Carolina to withhold 7% of the total of each payment made to a nonresident taxpayer who is not a corporation and 5% if the payment is made to a corporation. Contact the Department of Revenue for any applicable exceptions.

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For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at [www.sctax.org](http://www.sctax.org).

-----  
This notice is for informational purposes only. This agency does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, S.C. 29214-0140. All withholding questions should be directed to the Withholding Section at 803-898-5383.



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
**NONRESIDENT TAXPAYER  
REGISTRATION AFFIDAVIT  
INCOME TAX WITHHOLDING**

**I-312**  
(Rev. 5/7/04)  
3323

**The undersigned nonresident taxpayer on oath, being first duly sworn, hereby certifies as follows:**

1. Name of Nonresident Taxpayer: \_\_\_\_\_
2. Trade Name, if applicable (Doing Business As): \_\_\_\_\_
3. Mailing Address: \_\_\_\_\_
4. Federal Identification Number: \_\_\_\_\_
5. Hiring or Contracting with: \_\_\_\_\_  
    Name: \_\_\_\_\_  
    Address: \_\_\_\_\_
- Receiving Rentals or Royalties From: \_\_\_\_\_  
        Name: \_\_\_\_\_  
        Address: \_\_\_\_\_
- Beneficiary of Trusts and Estates: \_\_\_\_\_  
        Name: \_\_\_\_\_  
        Address: \_\_\_\_\_

6. I hereby certify that the above named nonresident taxpayer is currently registered with  
(check the appropriate box):

- ☐ The South Carolina Secretary of State or  
☐ The South Carolina Department of Revenue

Date of Registration: \_\_\_\_\_

7. I understand that by this registration, the above named nonresident taxpayer has agreed to be subject to the jurisdiction of the South Carolina Department of Revenue and the courts of South Carolina to determine its South Carolina tax liability, including estimated taxes, together with any related interest and penalties.

8. I understand the South Carolina Department of Revenue may revoke the withholding exemption granted under Code Sections 12-8-540 (rentals), 12-8-550 (temporarily doing business or professional services in South Carolina), and 12-8-570 (distributions to nonresident beneficiary by trusts or estates) at any time it determines that the above named nonresident taxpayer is not cooperating with the Department in the determination of its correct South Carolina tax liability.

The undersigned understands that any false statement contained herein could be punished by fine, imprisonment or both.

Recognizing that I am subject to the criminal penalties under Code Section 12-54-44 (B) (6) (a) (i), I declare that I have examined this affidavit and to the best of my knowledge and belief, it is true, correct and complete.

(Seal)

\_\_\_\_\_  
Signature of Nonresident Taxpayer (Owner, Partner or Corporate Officer, when relevant)

\_\_\_\_\_  
Date

If Corporate officer state title: \_\_\_\_\_

\_\_\_\_\_  
(Name - Please Print)

**Mail to:** The company or individual you are contracting with.

# OFFEROR'S CHECKLIST

## *AVOID COMMON BID/PROPOSAL MISTAKES*

Review this checklist prior to submitting your bid/proposal.  
If you fail to follow this checklist, you risk having your bid/proposal rejected.

- DO NOT INCLUDE ANY OF YOUR STANDARD CONTRACT FORMS!
- UNLESS EXPRESSLY REQUIRED, DO NOT INCLUDE ANY ADDITIONAL BOILERPLATE CONTRACT CLAUSES.
- REREAD YOUR ENTIRE BID/PROPOSAL TO MAKE SURE YOUR BID/PROPOSAL DOES NOT TAKE EXCEPTION TO ANY OF THE STATE'S MANDATORY REQUIREMENTS.
- MAKE SURE YOU HAVE PROPERLY MARKED ALL PROTECTED, CONFIDENTIAL, OR TRADE SECRET INFORMATION IN ACCORDANCE WITH THE INSTRUCTIONS ENTITLED: SUBMITTING CONFIDENTIAL INFORMATION. ***DO NOT MARK YOUR ENTIRE BID/PROPOSAL AS CONFIDENTIAL, TRADE SECRET, OR PROTECTED! DO NOT INCLUDE A LEGEND ON THE COVER STATING THAT YOUR ENTIRE RESPONSE IS NOT TO BE RELEASED!***
- HAVE YOU PROPERLY ACKNOWLEDGED ALL AMENDMENTS? INSTRUCTIONS REGARDING HOW TO ACKNOWLEDGE AN AMENDMENT SHOULD APPEAR IN ALL AMENDMENTS ISSUED.
- MAKE SURE YOUR BID/PROPOSAL INCLUDES A COPY OF THE SOLICITATION COVER PAGE. MAKE SURE THE COVER PAGE IS SIGNED BY A PERSON THAT IS AUTHORIZED TO CONTRACTUALLY BIND YOUR BUSINESS.
- MAKE SURE YOUR BID/PROPOSAL INCLUDES THE NUMBER OF COPIES REQUESTED.
- CHECK TO ENSURE YOUR BID/PROPOSAL INCLUDES EVERYTHING REQUESTED!
- IF YOU HAVE CONCERNS ABOUT THE SOLICITATION, DO NOT RAISE THOSE CONCERNS IN YOUR RESPONSE! **AFTER OPENING, IT IS TOO LATE! IF THIS SOLICITATION INCLUDES A PRE-BID/PROPOSAL CONFERENCE OR A QUESTION & ANSWER PERIOD, RAISE YOUR QUESTIONS AS A PART OF THAT PROCESS!** PLEASE SEE INSTRUCTIONS UNDER THE HEADING "SUBMISSION OF QUESTIONS" AND ANY PROVISIONS REGARDING PRE-BID/PROPOSAL CONFERENCES.

This checklist is included only as a reminder to help offerors avoid common mistakes.  
Responsiveness will be evaluated against the solicitation, ***not*** against this checklist.  
You do not need to return this checklist with your response.



# U N I V E R S I T Y O F SOUTH CAROLINA

## **ADDENDUM NO.1**

**TO:** All Vendors

**FROM:** Jack Nichols

**SUBJECT:** Solicitation #USC-BVB-1308-JN  
Deadline for Responses: Remains The Same

**DATE:** July 31, 2008

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This addendum No. 1 modifies the Best Value Bid only in the manner and to the extent as stated herein.

**Item One: Questions from Vendors**  
Questions from Vendors:

1. Page 10 / Requirements #20 states that USC will remove and replace all brickwork. Is this for entrance into the building?

Answer: The brickwork is for the entrance for the building.

2. Bid document does not designate where we are required to enter the building.

Answer: They will be required to enter the building through the parking lot side.

3. Are there any site visits required prior to actual installation?

Answer: A site visit is not mandatory.



4. The option for the gutter pin plates in my opinion should be required for better performance of the bulkhead. The documentation says "provide". Does this mean supply only or supply and install? Bid does not state how many would be needed if so.

Answer: Gutter Pins are to be provided and installed. The number of gutter pins should meet the standard requirement for this Bulkhead design.

BIDDER SHALL ACKNOWLEDGE RECEIPT OF ADDENDUM NO.1 IN THE SPACE PROVIDED BELOW AND RETURN IT WITH THEIR BID RESPONSE. FAILURE TO DO SO MAY SUBJECT BID TO REJECTION.

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Authorized Signature

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Firm

---

Date



1.360.403.7707 20405 69th Ave. NE • Arlington, Washington 98223

- Home
- Product
- Advantages
- Replacement
- Photographs
- Referrals
- Installations
- Contact
- Support
- Links

### The Only One-Piece, Monolithic Fiberglass Bulkhead on the Market



#### Don't be let down in the middle of your pool.

The Stark monolithic composite bulkhead is designed and manufactured for strength, endurance, beauty and ease of use. The Starkbulkhead has no rollers or tracks, it inflates in minutes and moves easily. Our experience and commitment to product development and quality assurance has determined our choice of premium materials, coatings, tooling and fabrication techniques.

Starkbulkheads has always been recognized as the benchmark of fiberglass products for aquatics. Our fundamentals have always been high quality materials, manufactured only by Stark trained personnel. Our precisely engineered process and climatically controlled facility consistently result in the very best composite products made in the world.

Stark, the original patent holder of the "swim wall" has been manufacturing and installing premium fiberglass bulkheads since 1965. All of these Starkbulkheads are still in use today.

Many Olympic, National, and World competitive swimming records have been set using Starkbulkheads, which help to create a fast pool.

Transform your pool or natatorium into a multi-use facility with a swimming pool bulkhead for classes, sports, diving, and special activities.

We will accommodate your facility's unique requirements with a custom designed Stark monolithic fiberglass bulkhead. Our new state of the art manufacturing facility in Arlington Washington assures the quickest time ever from bid to delivery.

A Starkbulkhead has been proven to be the very best choice for replacing old disfigured, corroded metal or inoperable bulkheads without any significant modifications to your existing facility.

We are so confident in our product that we offer a TWENTY-FIVE year structural warranty. To be matched by no other!

#### TWENTY-FIVE YEAR WARRANTY.

[e-mail starkbulkheads@verizon.net](mailto:starkbulkheads@verizon.net)

tel	Starkbulkheads/CAI	fax
1.360.403.7707	20405 69th Ave. NE • Arlington, Washington 98223	1.360.403.7807





1.262.403.7707 20405 69th Ave. NE - Arlington, Washington 98223



## The Only One-Piece, Monolithic Fiberglass Bulkhead on the Market

- Home
- Product
- Advantages
- Replacement
- Photographs
- Referrals
- Installations
- Contact
- Support
- Links

### The Product

Starkbulkheads manufacture 100% non-corrosive fiberglass bulkheads without welded seams or nuts and bolts to corrode and deteriorate from stress corrosion due to the pool chemistry. Our one-piece bulkhead maintains its strength and does not have the trampoline effect experienced with metal or sectional bulkheads which have to maintain air at all times for structural integrity.

Stark has been building and installing fiberglass bulkheads since 1965. Every bulkhead we have built is still being used today. We own all the molds, tools and buildings, necessary for quality construction, and the average length of time of employment of our employees is over ten years. We are not like other manufacturers that subcontract out their bulkhead fabrication and therefore loose control of time of delivery and quality construction.

We are so confident in our product we offer a twenty-five year structural warranty. This is not a deceptive prorated warranty where you pay all "labor" cost after one or two years, but a full structural warranty. We will send you a copy upon a request.

Starkbulkheads have been tested and used in high schools, colleges, and natatoriums throughout the world, and have received overwhelming approval from design engineers, aquatic directors, swimming coaches, and instructors because of their rigidity, ease of movement, and versatility.

Our monolithic type construction creates strength in our bulkheads far greater than any other bulkheads on the market today. The one-piece unit is built with a horizontal fiberglass shelf at water line, which permits multiple lane lines to be installed without creating side deflections. The take off platform anchors go through the topdeck and continue on through the water line shelf. This makes the starting platforms very rigid and swimmers tell us they have "no give" like on other type bulkheads.

The side walls are solid below the water line, and unlike the lattice type bulkheads where fingers and toes can become lodged, ours are smooth and rigid, allowing strong take-off and kick turns. With full openings at the water line, which not only provides a handhold, but also lets the swimming bow waves pass through without rebounding.

Wheels are not necessary since the bulkheads are made to float, not roll, for repositioning without damaging pool or deck tile. By injecting air into patented air chambers, two people can move them with veritable ease to a new location. Then by ejecting all the air, the bulkheads are anchored firmly into the desired position.

These many unique features of the Stark fiberglass bulkheads give competitive swimmers a greater advantage as they help to create a "fast pool" and give the swimmers that extra fraction of a second needed for the elusive world's record. This is one of the reasons that the Goodwill Games pool at Federal Way, Washington has set or broken some fifty United States and Worlds records since 1990. Also, St. Peters Rec-Plex near St. Louis, Mo. set eleven new records at the 1999 Division 3, NCAA Spring meet. When Stark replaced two stainless bulkheads at IUPUI the very first event held (dual in the pool) out of 26 events there were 6 US records and 1 world record broke.

Ceramic tile can be used for targets, lane markers, and for the topdeck area. A variety of tile colors and shapes are available. School emblems or mascot impressions can be mixed with the tiles to allow creative designs as well. Or simply use different colored gelcoat to match team colors.

Stark fiberglass bulkheads have become the preferred choice for replacing old stainless bulkheads. Many such bulkheads have been replaced that were less than seven years old. The City of Surrey, British Columbia removed two metal bulkheads that were less than six years old. The Governor Mifflin Middle School in Reading, PA. replaced one metal bulkhead that was six years old. The Kamehameha School in Honolulu, Hawaii replaced their metal bulkhead. The City of Salinas, California replaced a metal bulkhead. The City of Cerritos, California replaced two six year old metal bulkheads. The University of California at Berkeley, California replaced their bulkhead. Washington University in St. Louis, Missouri just replaced their bulkhead in August of 2000. T.J. Shelton the Assistant Athletic Director said "the difference in moving the Stark compared to the stainless is the difference between night and day". They love it. The City of Toronto replaced one at the Douglas Snow Aquatic Centre. The County of Las Alamos New Mexico replaced one due to liability claims after 11 years. IUPUI replaced two for structural and movement issues.

During a swim meet at the Eisenhower Pool on Long Island New York, a sectional bulkhead split and came a part while it was in use at a swim meet. At a pool in Nashville Tennessee, the lane line anchors broke during a nationally televised swim meet and the race had to be cancelled. At an international swim meet in Florida, a worlds record was set and when the pool was surveyed by the officials, it was discovered that the stainless steel bulkhead had such a significant side deflection that the worlds record was denied. Sectional




bulkheads have proven that they have to maintain air in their chambers to keep from deflecting while swimmers are on them. This causes the bulkhead to have a trampoline effect.

**TWENTY-FIVE YEAR WARRANTY.**

[e-mail starkbulkheads@verizon.net](mailto:starkbulkheads@verizon.net)

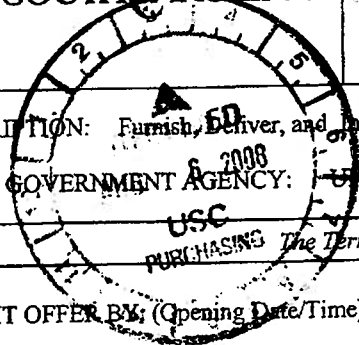
<i>tel</i>	<b>Starkbulkheads/CAI</b>	<i>fax</i>
1.360.403.7707	20405 69th Ave. NE • Arlington, Washington 98223	1.360.403.7807



 <b>UNIVERSITY OF SOUTH CAROLINA</b>	<b>BEST VALUE BID</b>	Solicitation Number	USC-BVB-1235-JN
		Date Printed	7/21/2008
		Date Issued	7/21/2008
		Procurement Officer	Jack Nichols
		Phone	803-777-4115
		E-Mail Address	jvnichol@gwm.sc.edu

DESCRIPTION: Furnish, Deliver, and Install New 10 Lane Air Lift Bulkhead for the Blatt PE Center Natatorium

USING GOVERNMENT AGENCY: UNIVERSITY OF SOUTH CAROLINA



THE TERM "Offer" Means Your "Bid" or "Proposal".

SUBMIT OFFER BY: (Opening Date/Time): August 6, 2008 at 3:00 pm local time See "Deadline for Submission of Offer" provision

QUESTIONS MUST BE RECEIVED BY: July 28, 2008 at 3:00 pm local time See "Questions From Offerors" provision

NUMBER OF COPIES TO BE SUBMITTED: One (1) Original and Four (4) Hardcopies Plus One (1) electronic copy

Offers must be submitted in a sealed package. Solicitation Number & Opening Date must appear on package exterior.

SUBMIT YOUR SEALED OFFER TO EITHER OF THE FOLLOWING ADDRESSES:

MAILING ADDRESS:	PHYSICAL ADDRESS:
University of South Carolina – Purchasing Dept. 1600 Hampton St., Suite 606 Columbia, SC 29208	University of South Carolina – Purchasing Dept. 1600 Hampton St., Suite 606 Columbia, SC 29208

See "Submitting Your Offer" provision

CONFERENCE TYPE: N/A  
DATE & TIME: N/A

LOCATION: N/A

As appropriate, see "Conferences-Pre-Bid/Proposal" & "Site Visit" provisions

AWARD & AMENDMENTS: Award will be posted at the Physical Address stated above on August 8, 2008. The award, this solicitation, and any amendments will be posted at the following web address: <http://purchasing.sc.edu>

You must submit a signed copy of this form with Your Offer. By submitting a bid or proposal, You agree to be bound by the terms of the Solicitation. You agree to hold Your Offer open for a minimum of thirty (30) calendar days after the Opening Date.

NAME OF OFFEROR (Full legal name of business submitting the offer) Composite Aquatic Innovations, Inc. Starkbulkheads		OFFEROR'S TYPE OF ENTITY: (Check one)  <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> Corporate entity (not tax-exempt) <input type="checkbox"/> Tax –exempt corporate entity <input type="checkbox"/> Government entity (federal, state, or local) <input type="checkbox"/> Other _____ (See "Signing Your Offer" provision.)
AUTHORIZED SIGNATURE (Person signing must be authorized to submit binding offer to enter contract on behalf of Offeror named above.)		
TITLE (Business title of person signing above) CEO		
PRINTED NAME (Printed name of person signing above) Ron Privrasky	DATE SIGNED 8/01/08	

Instructions regarding Offeror's name: Any award issued will be issued to, and the contract will be formed with, the entity identified as the offeror above. An offer may be submitted by only one legal entity. The entity named as the offeror must be a single and distinct legal entity. Do not use the name of a branch office or a division of a larger entity if the branch or division is not a separate legal entity, i.e., a separate corporation, partnership, sole proprietorship, etc.

STATE OF INCORPORATION (If offeror is a corporation, identify the state of Incorporation.)

Washington

TAXPAYER IDENTIFICATION NO.

47-0845407

(See "Taxpayer Identification Number" provision)

**PAGE TWO**  
(Return Page Two with Your Offer)

<b>HOME OFFICE ADDRESS</b> (Address for offeror's home office / principal place of business)  <p align="center">20405 69th Ave. N.E. Arlington, WA. 98223</p>	<b>NOTICE ADDRESS</b> (Address to which all procurement and contract related notices should be sent.) (See "Notice" clause)  <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:15%;">Area Code</td> <td style="width:25%;">Number</td> <td style="width:20%;">Extension</td> <td style="width:40%;">Facsimile</td> </tr> <tr> <td align="center">360</td> <td align="center">403-7707</td> <td></td> <td align="center">360-403-7807</td> </tr> <tr> <td colspan="4">E-mail Address starkbulkheads@verizon.net</td> </tr> </table>	Area Code	Number	Extension	Facsimile	360	403-7707		360-403-7807	E-mail Address starkbulkheads@verizon.net			
Area Code	Number	Extension	Facsimile										
360	403-7707		360-403-7807										
E-mail Address starkbulkheads@verizon.net													

<b>PAYMENT ADDRESS</b> (Address to which payments will be sent.) (See "Payment" clause)  	<b>ORDER ADDRESS</b> (Address to which purchase orders will be sent) (See "Purchase Orders" and "Contract Documents" clauses)  
<input checked="" type="checkbox"/> Payment Address same as Home Office Address <input type="checkbox"/> Payment Address same as Notice Address (check only one)	<input checked="" type="checkbox"/> Order Address same as Home Office Address <input type="checkbox"/> Order Address same as Notice Address (check only one)

ACKNOWLEDGMENT OF AMENDMENTS	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date	Amendment No.	Amendment Issue Date
Offerors acknowledges receipt of amendments by indicating amendment number and its date of issue.  See "Amendments to Solicitation" Provision	1	7/31/08						

<b>DISCOUNT FOR PROMPT PAYMENT</b> See "Discount for Prompt Payment" clause	10 Calendar Days (%)  <b>2.5%</b>	20 Calendar Days (%)  	30 Calendar Days (%)  <b>terms</b>	____ Calendar Days (%)
--	---	------------------------------	--	------------------------

<b>PREFERENCES - SC RESIDENT VENDOR PREFERENCE</b> (June 2005): Section 11-35-1524 provides a preference for offerors that qualify as a resident vendor. A resident vendor is an offeror that (a) is authorized to transact business within South Carolina, (b) maintains an office* in South Carolina, (c) either (1) maintains a minimum \$10,000.00 representative inventory at the time of the solicitation, or (2) is a manufacturer which is headquartered and has at least a ten million dollar payroll in South Carolina, and the product is made or processed from raw materials into a finished end-product by such manufacturer or an affiliate (as defined in section 1563 of the Internal Revenue Code) of such manufacturer, and (d) has paid all assessed taxes. If applicable, preference will be applied as required by law.	<b>OFFERORS REQUESTING THIS PREFERENCE MUST INITIAL HERE.</b> _____  <b>*ADDRESS AND PHONE OF IN-STATE OFFICE</b>  <div style="border: 1px solid black; height: 40px; margin-bottom: 5px;"></div> <input type="checkbox"/> In-State Office Address same as Home Office Address <input type="checkbox"/> In-State Office Address same as Notice Address <p align="right">(CHECK ONLY ONE)</p>
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<b>PREFERENCES - SC/US END-PRODUCT</b> (June 2005): Section 11-35-1524 provides a preference to vendors offering South Carolina end-products or US end-products, if those products are made, manufactured, or grown in SC or the US, respectively. An end-product is the item identified for acquisition in this solicitation, including all component parts in final form and ready for the use intended. The terms "made," "manufactured," and "grown" are defined by Section 11-35-1524(B). By signing your offer and checking the appropriate space(s) provided and identified on the bid schedule, offeror certifies that the end-product(s) is either made, manufactured or grown in South Carolina, or other states of the United States, as applicable. Preference will be applied as required by law.	<b>IF THIS PREFERENCE APPLIES TO THIS PROCUREMENT, PART VII (BIDDING SCHEDULE) WILL INCLUDE A PLACE TO CLAIM THE PREFERENCE.</b> <b>OFFERORS REQUESTING THIS PREFERENCE MUST CHECK THE APPROPRIATE SPACES ON THE BIDDING SCHEDULE.</b>
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# U N I V E R S I T Y O F SOUTH CAROLINA

## ADDENDUM NO.1

**TO:** All Vendors  
**FROM:** Jack Nichols  
**SUBJECT:** Solicitation #USC-BVB-1308-JN  
Deadline for Responses: Remains The Same  
**DATE:** July 31, 2008

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This addendum No. 1 modifies the Best Value Bid only in the manner and to the extent as stated herein.

**Item One: Questions from Vendors**  
Questions from Vendors:

1. Page 10 / Requirements #20 states that USC will remove and replace all brickwork. Is this for entrance into the building?

Answer: The brickwork is for the entrance for the building.

2. Bid document does not designate where we are required to enter the building.

Answer: They will be required to enter the building through the parking lot side.

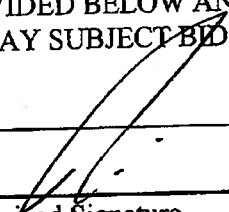
3. Are there any site visits required prior to actual installation?

Answer: A site visit is not mandatory.

4. The option for the gutter pin plates in my opinion should be required for better performance of the bulkhead. The documentation says "provide". Does this mean supply only or supply and install? Bid does not state how many would be needed if so.

Answer: Gutter Pins are to be provided and installed. The number of gutter pins should meet the standard requirement for this Bulkhead design.

BIDDER SHALL ACKNOWLEDGE RECEIPT OF ADDENDUM NO.1 IN THE SPACE PROVIDED BELOW AND RETURN IT WITH THEIR BID RESPONSE. FAILURE TO DO SO MAY SUBJECT BID TO REJECTION.

  
\_\_\_\_\_  
Authorized Signature

Composite Aquatic Innovations, Inc. / Starkbulkheads

Firm

8/01/08

Date



# STARK BULKHEADS

A DIVISION OF  
COMPOSITE AQUATIC INNOVATIONS, INC.

August 4, 2008

University of South Carolina  
Purchasing Dept.  
1600 Hampton Street  
Suite 606  
Columbia, SC. 29208

Re: USC-BVB-123-JN

Experience and References (please visit website [www.starkbulkheads.com](http://www.starkbulkheads.com) for install list for past 9 years).

- U of Tennessee
- Michigan State University
- University of Arkansas
- University of Cincinnati
- University of Ohio
- University of Missouri
- University of Chicago
- MIT
- Purdue University
- Stanford University

Reliability of delivery: We are the manufacturer so we have direct control of entire process.

Stark understands that it will be responsible for the removal/disposal of the existing bulkhead and furnish and install a new fiberglass bulkhead per drawings enclosed. Stark also understands that the University will be responsible for the removal of the brick wall under the roll up door all the way to pool deck level to allow forklifts to drive into the pool area from a semi trailer prior to Stark showing up with the new bulkhead. Portal must be closest to grandstand side of pool. The University will also be responsible for providing sufficient staging area outside portal. Stark will not be responsible for damage to building and grounds however Stark will use protection (masonite) on the pool deck to minimize damage to the tile and take necessary precautions to eliminate any damage to building and grounds.

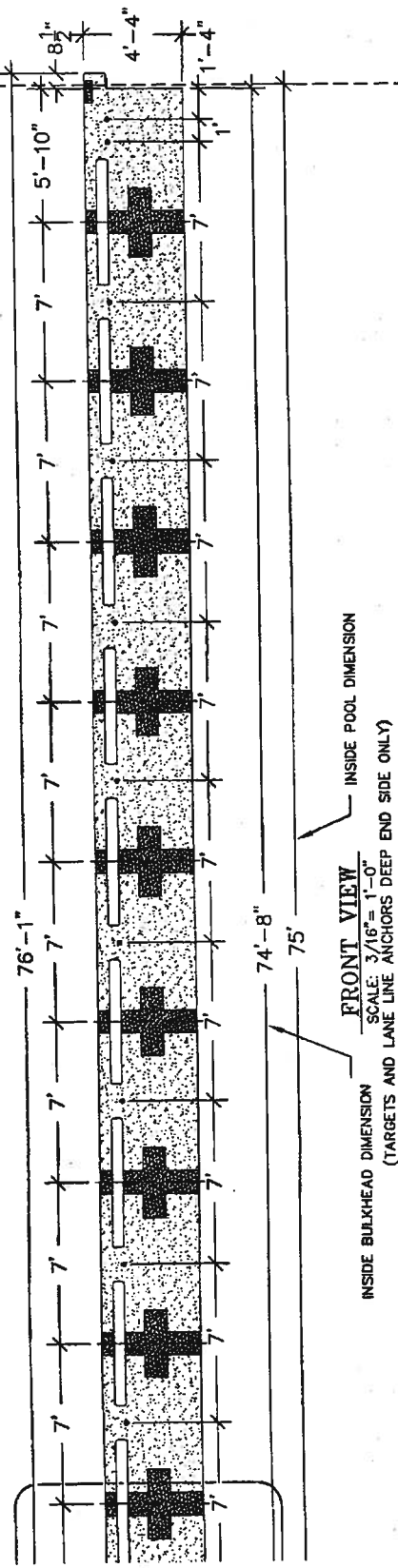
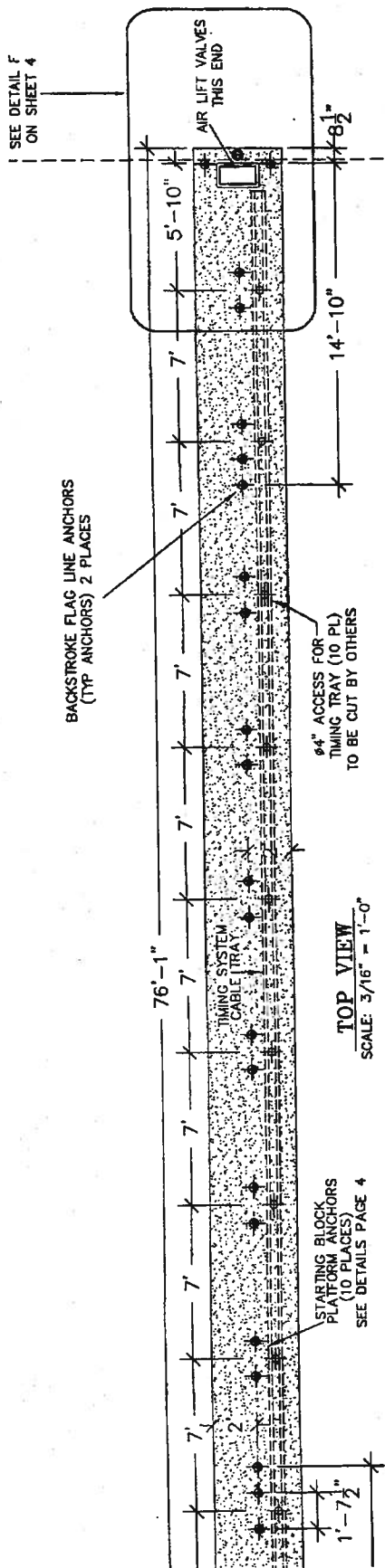
Respectfully,

Ron Privrasky  
CEO

EFFECT	REV	DATE	DESCRIPTION	CONS	WFO	SPC	RECU

- SUITABLE MEANS OF ANCHORING THE BULKHEAD SHALL BE PROVIDED TO RESIST ALL DEAD AND LIVE LOADS. ANCHORS SHALL BE PROVIDED AT 7' ON CENTER AND INSTALLED BY STARK BULKHEADS WHICH SHALL POSITION THE BULKHEADS IN THE REQUIRED COURSE DIMENSIONS FOR MULTIPLE LOCATIONS.
- ACCESS HATCHES SHALL BE INCLUDED AT BOTH ENDS OF THE BULKHEAD TO FACILITATE INSPECTION OF THE INTERIOR OF THE BULKHEAD, ANCHOR MECHANISMS, AND TO ALLOW FOR INSTALLATION OF ELECTRONIC TIMING CABLES AND CONDUCTORS INTO TIMING GUTTERS.
- THE MANUFACTURER SHALL GUARANTEE THE COMPLETE BULKHEAD TO BE FREE OF MATERIAL DEFECTS, AND WARRANTY THE VARIOUS INDIVIDUAL COMPOSITE MATERIALS FOR A PERIOD OF THREE (3) YEARS WITH A TWENTY FIVE (25) YEAR STRUCTURAL WARRANTY.

3D FOR A COMPLETED  
HALL SATISFY THE  
IONS AND  
F THE  
HE STATIC WEIGHT AND  
ROOF UNIFORM GUTTER OR



**STARK BULKHEADS**  
A DIVISION OF  
COMPOSITE AIRLIFT INNOVATIONS, INC.

**1 STARK FIBERGLASS AIRLIFT® BULKHEAD FOR UNIVERSITY OF SOUTH CAROLINA COLUMBIA, SOUTH CAROLINA**

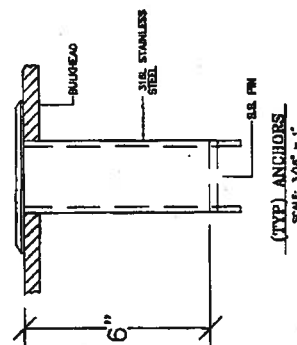
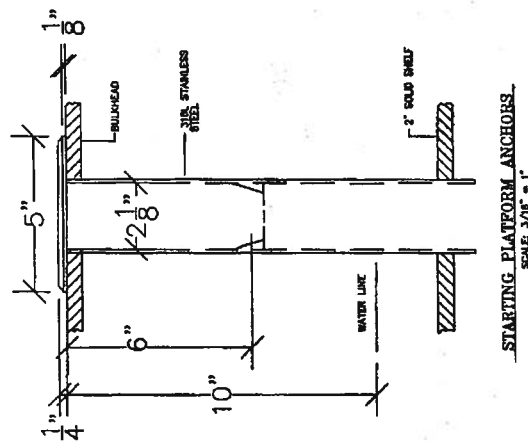
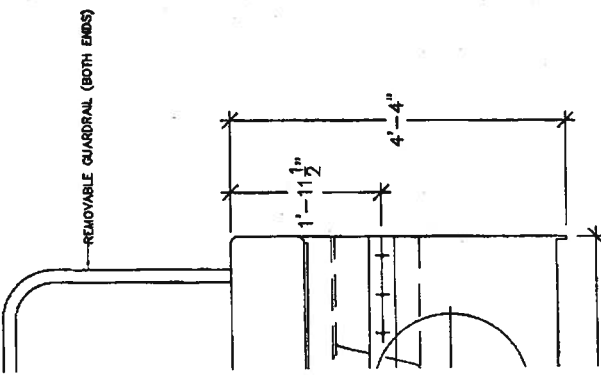
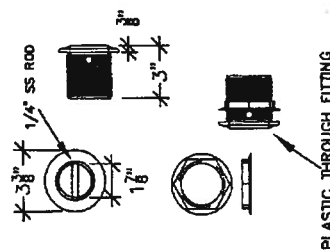
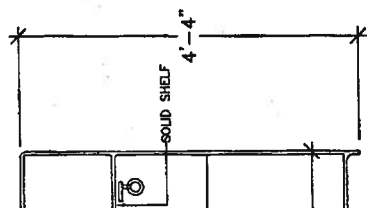
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DATE

A DIVISION OF  
COMPOSITE AQUATIC INNOVATIONS, INC.



Figure 1. The effect of the number of trials on the mean number of correct responses. The number of correct responses increased with the number of trials. The error bars represent the standard error of the mean.



# 'STARK BULKHEADS

A DIVISION OF  
COMPOSITE AQUATIC INNOVATIONS, INC.

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DOWN: RON PRIVRASKY

DRAWING NO.	SHEET	OF
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